



3 1761 00365301 1

1911 AUG 15 1925



~~P
Urbana
I~~ 7463 I

UNIVERSITY OF ILLINOIS STUDIES

IN THE

SOCIAL SCIENCES

PUBLISHED QUARTERLY

BY

THE UNIVERSITY OF ILLINOIS

VOLUME IX

URBANA, ILLINOIS

1920

184405
1.10.23

H
31
I4
v.9

BOARD OF EDITORS

JOHN A. FAIRLIE

LAURENCE M. LARSON

ERNEST L. BOGART

TABLE OF CONTENTS

NO.	PAGES
1, 2. War Powers of the Executive in the United States. By C. A. Berdahl.....	1-296
3. English Government Finance, 1485-1558. By Frederick C. Dietz.....	297-541
4. The Economic Policies of Richelieu. By F. C. Palm.....	541-743

UNIVERSITY OF ILLINOIS STUDIES
IN THE
SOCIAL SCIENCES

VOL. IX

MARCH-JUNE, 1920

Nos. 1 and 2

BOARD OF EDITORS:

ERNEST L. BOGART

JOHN A. FAIRLIE

ALBERT H. LYBYER

PUBLISHED BY THE UNIVERSITY OF ILLINOIS
UNDER THE AUSPICES OF THE GRADUATE SCHOOL
URBANA, ILLINOIS

COPYRIGHT, 1921
BY THE UNIVERSITY OF ILLINOIS

War Powers of the Executive in the United States

BY

CLARENCE A. BERDAHL, PH. D.

Instructor in Political Science
University of Illinois

CONTENTS

	PAGE
PREFACE	7
CHAPTER I. INTRODUCTION.....	11
General conceptions of executive power.....	11
General conceptions of the war powers.....	15
Source of the President's war powers.....	20
Forms of presidential action.....	20
Delegation of presidential powers.....	21
I. POWERS RELATING TO THE BEGINNING OF WAR	
CHAPTER II. CONTROL OF FOREIGN RELATIONS.....	25
Initiation and formulation of foreign policy.....	26
Power of recognition	31
Power to sever diplomatic relations	35
Executive agreements	37
CHAPTER III. MILITARY MEASURES SHORT OF WAR.....	43
Employment of armed forces in aid of the civil power.....	43
Protection of "inchoate" interests of the United States.....	45
Protection of American rights and interests abroad.....	49
Intervention and police supervision	53
CHAPTER IV. POWER OF DEFENSE.....	58
Power to begin a "defensive" war.....	58
Defense against attack or invasion.....	62
Punitive expeditions	65
Arming of merchant vessels.....	67
Recognition of "existing" state of war.....	70
CHAPTER V. POWERS WITH REGARD TO A DECLARATION OF WAR.....	78
Debates in Convention of 1787.....	78
Importance of power of recommendation.....	80
Declaration of causes and purposes.....	94
Power of veto	95
Notification of state of war.....	96
II. MILITARY POWERS IN TIME OF WAR	
CHAPTER VI. POWER TO RAISE AND ORGANIZE THE ARMED FORCES...	101
Nature of the President's power.....	101
Powers under voluntary enlistment	101
Powers under conscription	105
Exercise of power without authority.....	108
Powers with regard to organization.....	111
CHAPTER VII. POWERS OF COMMAND.....	115
Nature of powers as commander-in-chief.....	115
Power of personal command.....	118
General direction of military operations.....	121

Appointment and dismissal of officers.....	126
Powers with regard to the militia.....	130
CHAPTER VIII. POWERS OF MILITARY JURISDICTION.....	138
Courts-martial	138
Military commissions	143
Power of pardon	148
CHAPTER IX. POWERS OF MILITARY GOVERNMENT.....	152
Definition and authority to establish.....	152
Power to determine its character.....	154
Functions under military government.....	157

III. CIVIL POWERS IN TIME OF WAR

CHAPTER X. CONTROL OF ADMINISTRATION.....	167
Military administrative agencies.....	167
Special war administrative services.....	170
Proposals for coördination.....	172
Overman Act	174
CHAPTER XI. POWERS OF POLICE CONTROL.....	182
The war power and the Bill of Rights.....	182
Police control of aliens	184
Suspension of the writ of habeas corpus.....	188
Power of censorship.....	192
CHAPTER XII. POWERS OF ECONOMIC CONTROL.....	203
Control of food and fuel.....	204
Control of trade and industry.....	208
Control of private property.....	212
Control of transportation and communication.....	214

IV. POWERS RELATING TO THE TERMINATION OF WAR

CHAPTER XIII. POWER OF TERMINATING WAR IN THE UNITED STATES	223
Methods of terminating war.....	223
Recent opinions and actions in the United States.....	224
Debates in Convention of 1787.....	228
Official declarations by Congress	230
CHAPTER XIV. POWERS WITH REGARD TO A TREATY OF PEACE.....	232
Armistice and preliminary protocol	232
Appointment of peace commissioners.....	237
Control of peace negotiations.....	242
Final ratification	246
CHAPTER XV. POWERS WITH REGARD TO RECONSTRUCTION.....	250
Resumption of diplomatic relations.....	251
Government of acquired territory.....	252
Powers under recent war legislation.....	262
CHAPTER XVI. CONCLUSION.....	265
BIBLIOGRAPHY	271
TABLE OF CASES.....	283
INDEX	285

PREFACE

The powers of the Executive relating to war have received surprisingly little attention in treatises and commentaries on the Constitution. They are usually passed by with little more than a repetition of the constitutional provision making the President the Commander-in-Chief of the armed forces of the nation. This study is an attempt to describe these war powers more fully and systematically than has heretofore been done. For this purpose, the term "war powers" has been interpreted somewhat liberally, so as to include not only the powers that may be exercised during the actual conduct of war, but also those that relate to the initiation and termination of war and to the reconstruction period following war. It has been necessary, in great measure, to work over old material and to make use of familiar historical incidents. Nevertheless, it is hoped that something has been contributed to show more clearly the comprehensive scope and the almost unlimited nature of this phase of the President's power.

The writer is indebted to members of the Political Science Seminar of the University of Illinois, and more especially to Professors Garner and Fairlie, for valuable suggestions and kindly criticism. He is alone responsible for any errors of fact or conclusion.

UNIVERSITY OF ILLINOIS

“It is difficult to describe any single part of a great governmental system without describing the whole of it. Governments are living things and operate as organic wholes.”

—Woodrow Wilson.
*Constitutional Government
in the United States*

CHAPTER I

INTRODUCTION

“The executive power shall be vested in a President of the United States of America.”¹ The language here used by the Constitution in describing the executive power in the government of the United States is strikingly different from that describing the general power of either of the other two great departments. The article dealing with the legislative department uses the words, “All legislative powers herein granted . . .”² showing that the following specified powers clearly constitute a limitation on the possible claims of that department to power; while the article devoted to the judiciary also expressly states that the judicial power of the United States “shall extend to” certain enumerated cases,³ thereby obviously excluding all other cases over which the judiciary might otherwise claim jurisdiction.

The lack of such express limitations in the article dealing with the Executive has led to some difference of opinion as to whether the executive power vested in the President by the Constitution is defined and limited by the following specified powers, or whether it includes other powers not enumerated but naturally executive in character. Even if the former interpretation of the Constitution is accepted as correct, the conception of the term “executive power” still remains somewhat vague, since several of the expressly enumerated powers of the President, such as his powers as Commander-in-Chief and his power to see that the laws are executed, are in themselves undefined in the Constitution, uncertain as to their limits, and therefore subject to various interpretations.

¹ *Constitution*, Art. II, Sec. 1.

² *Ibid.*, Art. I, Sec. 1.

³ *Ibid.*, Art. III, Sec. 2.

The article dealing with the Executive has therefore been characterized as "the most defective part of the Constitution," its loose and general expressions enabling the President, by implication and construction, "either to neglect his duties or to enlarge his powers."⁴ A distinguished historian says that while our Constitution in the main is of the rigid type, its flexible character is shown in the provisions conferring the powers and defining the duties of the Executive. "Everything is clearly stated, but the statements do not go beyond the elementary." Pointing out that while the Constitution did not authorize certain of Lincoln's acts, neither did it expressly forbid them, he holds that there is "room for inference, a chance for development, and an opportunity for a strong man to imprint his character upon the office."⁵ Somewhat the same idea was expressed by President Wilson some years ago when he wrote: "The President is at liberty, both in law and conscience, to be as big a man as he can. His capacity will set the limit."⁶

A doctrine of constitutional construction — the so-called Wilson-Roosevelt doctrine with regard to the control of matters within the "twilight zone" between the national and state jurisdictions⁷ — was translated by President Roosevelt into terms of inherent executive power. He said: "The most important factor in getting the right spirit in my Administration, next to insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people, was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by Congress under its constitutional powers. My view

⁴View of Secretary of State Upshur. See his more extended statement, quoted in Taft, *Our Chief Magistrate and His Powers*, 141.

⁵Rhodes, *Historical Essays*, 204, 214.

⁶*Constitutional Government in the United States*, 70.

⁷First enunciated by James Wilson in 1785, recently advocated by President Roosevelt, and stated as follows: "That when a subject has been neither expressly excluded from the regulating power of the Federal Government, nor expressly placed within the exclusive control of the States, it may be regulated by Congress if it be, or become, a matter the regulation of which is of general importance to the whole nation, and at the same time a matter over which the States are, in practical fact, unable to exercise the necessary controlling power." Willoughby, *Constitutional Law*, I, 47.

was that every executive officer in high position was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation I did and caused to be done many things not previously done by the President and the heads of the departments. I did not usurp power but did greatly broaden the use of executive power. In other words, I acted for the public welfare, I acted for the common well being of all our people, whenever and in whatever measure was necessary, unless prevented by direct constitutional or legislative prohibition.”⁸

Roosevelt's theory of executive power is disputed, however, by equally eminent authority. Senator Rayner, one of the leading constitutional lawyers of his time, contended that the clause dealing with the executive power relates simply to the distribution of governmental functions, and should not be considered as a grant of power at all.⁹ Professor Goodnow says that the holder of executive power “is for the most part to exercise the powers which have clearly been given to him by the Constitution, and the Constitution itself is regarded as a grant of power not otherwise possessed, rather than as a limitation of power already in existence.”¹⁰

The Supreme Court has likewise not only repudiated the Wilson-Roosevelt doctrine of constitutional construction as being contrary to the 10th Amendment,¹¹ but it has also definitely refuted the Roosevelt theory of executive power. “We have no officers in this government,” says the Court, “from the Presi-

⁸ Roosevelt, *Autobiography*, 388-389.

⁹ Speech in U. S. Senate, Jan. 31, 1907. *Cong. Record*, XLI, Pt. II (59 Cong., 2 Sess.), 2010.

¹⁰ *Principles of Constitutional Government*, 89.

¹¹ *Kansas v. Colorado*, 206 U. S., 46, 89-90 (1907). The 10th Amendment reads as follows: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

dent down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority.”¹² It would therefore seem that ex-President Taft reflected the better opinion when he stated the true view of executive power to be “that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise. Such specific grant must be either in the Federal Constitution or in an Act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to him to be in the public interest The grants of Executive power are necessarily in general terms in order not to embarrass the Executive within the field of action plainly marked for him, but his jurisdiction must be justified and vindicated by affirmative constitutional or statutory provisions or it does not exist.”¹³

Altho the weight of authority upholds the contention that executive power in the United States is limited definitely to the powers enumerated in the Constitution, or clearly implied therefrom, the interpretation of those enumerated powers is frequently such as to give to the President an extraordinary and practically undefined range of authority. Thus, for example, it has been authoritatively held that the President, under his power “to take care that the laws be faithfully executed,” may undertake measures and exercise authority, for the enforcement of the law or the protection of federal rights, not specifically granted by Constitution or statute.¹⁴ Other of the President’s enumerated powers, such as his power as Commander-in-Chief

¹² *The Floyd Acceptances*, 7 Wall., 666, 676 (1868).

¹³ *Our Chief Magistrate and His Powers*, 139-140.

¹⁴ *In re Neagle*, 135 U. S., 1, 63-64, 67 (1890). Cf. dissenting opinion, which held that such enforcement or protection “must proceed not from the President, but primarily from Congress,” and that if Congress does not pass laws in reference to such matters, “there is not the slightest legal necessity out of which to imply any such power in the President.” *Ibid.*, 82, 83. See also view of W. W. Willoughby: “The obligation to take care that the laws of the United States are faithfully executed, is an obligation which is to be fulfilled by the exercise of those powers which the Constitution and Congress have seen fit to confer.” *Constitutional Law*, II, 1151.

and his power to receive and send ambassadors and ministers, are likewise subject to the same broad interpretation.

If the general conception of executive power in the United States is somewhat vague and open to various interpretations, that is especially true of the nature and extent of executive power with regard to war. It has rightly been said that "the domain of the executive power in time of war constitutes a sort of 'dark continent' in our jurisprudence, the boundaries of which are undetermined."¹⁵

From the very beginning of our history as a nation, statesmen and commentators have held that since it is impossible to foresee what may be the exigencies or circumstances endangering the public safety, therefore "no constitutional shackles can wisely be imposed," and none are imposed upon the so-called war powers.¹⁶ They have held that there are two distinct classes of powers under the Constitution — the peace powers, which are subject to the restrictions of the Constitution, and the war powers, which are limited only by the laws and usages of nations,¹⁷

¹⁵ J. W. Garner, in *Revue du Droit Public et de la Science Politique*, XXXV, 13 (Jan.-Mar., 1918).

¹⁶ See argument of Hamilton, in *The Federalist*, No. 23 (Goldwin Smith ed., pp. 119-120). Cf. Speech of Senator Sumner, in U. S. Senate, June 27, 1862: "Pray, Sir, where in the Constitution is any limitation of the War Powers? Let Senators who would limit them mention a single section, line, or phrase, which even hints at any limitation. . . . The War Powers are derived from the Constitution, but, when once set in motion, are without any restraint from the Constitution; so that what is done in pursuance of them is at the same time under the Constitution and outside the Constitution. It is under the Constitution in the latitude with which it is conducted; but, whether under the Constitution or outside the Constitution, all that is done in pursuance of the War Powers is constitutional." *Works of Charles Sumner*, VII, 131-132. See also Fisher, *Trial of the Constitution*, 199.

¹⁷ "There are, then, in the authority of Congress and of the Executive, two classes of powers, altogether different in their nature and often incompatible with each other — the war power and the peace power. The *peace power* is limited by regulations and restricted by provisions prescribed within the Constitution itself. The *war power* is limited only by the laws and usages of nations. This power is tremendous; it is strictly constitutional, but it breaks down every barrier so anxiously erected for the protection of liberty, of property and of life. . . . The powers of war are all regulated by the laws of nations, and are subject to no other limitations." Speech of John Quincy Adams, in House of Representatives, May 25, 1836. *Cong. Debates*, XII, Pt. IV (24 Cong., 1 Sess.), 4038, 4039.

and under which the rights of peace may even be disregarded or curtailed.¹⁸ They have asserted that the war power implies the right to do anything that may seem necessary to carry on the war successfully, even to the extent of performing otherwise unconstitutional acts.¹⁹

These claims with regard to the extent of the war power have also been sanctioned by the Supreme Court. Thus, in upholding the Confiscation Acts of the Civil War, the Court said: "If the statutes were not enacted under the municipal power of Congress to legislate for the punishment of crimes against the sovereignty of the United States; if, on the contrary, they are an exercise of the war powers of the government, it is clear they are not affected by the restrictions imposed by the 5th and 6th Amendments. . . . Of course the power to declare war

¹⁸ "But in bestowing upon the Government War Powers without limitation, they [the makers of the Constitution] embodied in the Constitution all the Rights of War as completely as if those rights had been severally set down and enumerated; and among the first of these is the right to disregard the Rights of Peace." *Works of Charles Sumner*, VII, 136-137.

"It seems to be pretty well settled by the common sense of mankind that when a nation is fighting for its existence it cannot be fettered by all the legal technicalities which obtain in time of peace." Rhodes, *Historical Essays*, 214.

"What is the effect of our entering upon the war? The effect is that we have surrendered and are obliged to surrender a great measure of that liberty which you and I have been asserting in court during all our lives; power over property, power over persons. This has to be vested in a military commander in order to carry on war successfully." Speech of Elihu Root at Saratoga Springs, Sept., 1917, quoted in *Va. Law Rev.*, V, 179.

¹⁹ "When the Constitution conferred upon Congress the right to declare war, it by necessary implication conferred upon Congress the right to do anything that in its judgment is necessary to carry that war to a successful conclusion." Senator P. C. Knox, in U. S. Senate, May 29, 1917. *Cong. Record*, 65 Cong., 1 Sess., 3276.

"I felt that measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the nation." Letter of Lincoln to A. G. Hodges, Apr. 4, 1864. Nicolay & Hay, *Complete Works of Abraham Lincoln*, II, 508.

"If the Union and the Government cannot be saved out of this terrible shock of war constitutionally, a Union and a Government must be saved unconstitutionally." Fisher, *Trial of the Constitution*, 199.

involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted.”²⁰ Even the dissenting justices in this case admitted that legislation founded upon the war power is subject to quite different considerations from that based upon the municipal power of the government, and “is subject to no limitations, except such as are imposed by the law of nations in the conduct of war . . . The war powers of the government have no express limitations in the Constitution, and the only limitation to which their exercise is subject is the law of nations.”²¹ The same principle has also been upheld by the Court in other cases.²²

The authorities thus seem to agree regarding the nature and unlimited extent of the “war powers” as such, the extent to which the exercise of these war powers is vested in the President or in Congress is a matter of some dispute. For example, Senator Browning, during the Civil War, asserted the complete authority of the Executive in determining upon the measures necessary to meet any war emergency, denying that Congress had even coordinate power with the President in that respect. “It is not true,” he said, “that Congress may decide upon the measures demanded by military necessities and order them to be enforced. . . These necessities can be determined only by the military commander, and to him the Constitution has intrusted the prerogative of judging of them. When the Constitution made the President ‘Commander-in-Chief of the Army and Navy of the United States,’ it clothed him with the incidental powers necessary to a full, faithful and sufficient performance of the duties of that high office; and to decide what are military necessities, and to devise and execute the requisite measures to meet them, is one of these incidents. It is not a legislative, but an executive function, and Congress has nothing to do with it.”²³

On the other hand, Senator Sumner disputed this claim to executive power, and held that the exercise of the war powers

²⁰ *Miller v. United States*, 11 Wall., 268, 304-305 (1870).

²¹ *Ibid.*, 315.

²² *Stewart v. Kahn*, 11 Wall., 493, 506-507 (1870); *Mechanics and Traders Bank v. Union Bank*, 22 Wall., 276, 295 (1874); *McCormick et al. v. Humphrey*, 27 Ind., 144, 154 (1866).

²³ Speech in U. S. Senate, June 25, 1862. *Cong. Globe*, 37 Cong., 2 Sess., 2919, 2920, 2922.

rested with Congress. "Of the pretension that all these enormous powers belong to the President, and not to Congress, I try to speak calmly and within bounds. I mean always to be parliamentary. But a pretension so irrational and unconstitutional; so absurd and tyrannical, is not entitled to respect. Such a pretension would change the National Government from a government of law to that of a military dictator . . ."²⁴

As a matter of fact, the growth of executive power into a practical dictatorship in time of war, does not seem to have been especially feared in this country. During the Revolution, attempts were made, both in New York and Virginia, to create a dictator, who in the latter state was to be "invested with every power legislative, executive, and judiciary, civil and military, of life and death over our persons and over our properties,"²⁵ a proposal apparently approved by such a democrat as Patrick Henry.²⁶ Washington was actually given the power of a dictator on three separate occasions;²⁷ while Lincoln has been referred to by impartial writers as exercising "more arbitrary power than any Englishman since Oliver Cromwell," and as one whose acts were "worthy of a Tudor."²⁸ During the recent World War, the necessity of making the President the supreme dictator in order to win the war was seriously suggested in Congress.²⁹

²⁴Speech in U. S. Senate, June 27, 1862. *Works of Charles Sumner*, VII, 139-140. But cf. Sumner's remarks in a speech at Boston, only a few months later (Oct. 6): "In war there is no constitutional limit to the activity of the executive, except the emergency. The safety of the people is the highest law. There is no blow the President can strike; there is nothing he can do against the Rebellion, that is not constitutional. Only inaction can be unconstitutional." *Ibid.*, 217.

²⁵*Elliot's Debates*, II, 357-361; *Writings of Thomas Jefferson*, III, 231.

²⁶It was, however, bitterly opposed by Jefferson. *Elliot's Debates*, III, 160; *Writings of Thomas Jefferson*, III, 231.

²⁷See resolves of Dec. 27, 1776, Sept. 17 and Nov. 14, 1777. *Jour. Cont. Cong.*, VI, 1045-1046; VIII, 752; IX, 905. See also *Elliot's Debates*, III, 79.

²⁸Rhodes, *Historical Essays*, 213; cf. Bryce, *American Commonwealth*, I, 65-66, 72; Ford, *Rise and Growth of American Politics*, 280.

²⁹Senator Harding (Ohio) made the suggestion in August, 1917: "What the United States needs and what it must have if it is to win the war is a supreme dictator, with sole control of and sole responsibility for every phase of war activity, and this today means practically every phase of Government. Not only does this country need such a dictator,

That the President can of his own accord constitutionally assume dictatorial power in time of war has been denied by the courts as "an extravagant assumption;"³⁰ altho most authorities hold that the war powers of the President constitute a "latent power of discretionary action" capable of almost unlimited expansion in times of emergency and making the President practically absolute within a certain sphere of action.³¹

The exact limits of this sphere of action for the President and the line of demarcation between his war powers and those of Congress, are difficult to determine. An attempt to draw such a line and to delimit such a sphere of action was made in a famous case in the following language: "Congress has the power not only to raise and support and govern armies, but to declare war. It has, therefore, the power to provide by law for carrying on war. This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interfere with the command of the forces and the conduct of campaigns. That power and duty belong to the President as Commander-in-Chief. Both these powers are derived from the Constitution, but neither is defined by that instrument. Their extent must be determined by their nature and by the principles of our institutions. The power to make the necessary laws is in Congress; the power to execute in the President. Both powers imply many subordinate and auxilliary powers. Each includes all authorities essential to its due exercise. But neither can the President in war more than in peace, intrude upon the proper authority of Congress, nor Congress upon the proper authority of the President. Both are servants of the people, whose will is expressed in the fundamental law."³² Other authorities have

in my opinion it is sure to have one before the war goes much further... The sooner it comes the better for all of us. . . . For supreme dictator at the present moment there is but one possible man, the President of the United States." *N. Y. Times*, Feb. 10, 1918.

³⁰ *Jones v. Seward*, 40 Barb. (N. Y.), 563, 571 (1863).

³¹ Goodnow, *Comparative Administrative Law*, I, 32; Watson, *On the Constitution*, II, 914; Baldwin, *Modern Political Institutions*, 91-92; Channing, *History of the United States*, III, 513; W. A. Dunning, "The War Power of the President," *New Republic*, XI, 76-79 (May 19, 1917). For a somewhat extravagant claim as to the absolute nature of the President's war powers, see remarks of Senator Lewis, in U. S. Senate, June 30, 1917. *Cong. Record*, LV, Pt. 5 (65 Cong., 1 Sess.), 4552, 4553.

³² *Ex parte Milligan*, 4 Wall., 2, 139 (1866).

attempted a briefer and simpler delimitation by saying that "Congress regulates whatever is of general and permanent importance, while the President determines all matters temporary and not general in their nature."³³

The main source of the President's war powers is of course the Constitution. Besides certain powers relating directly to war that are expressly conferred upon the President by that instrument,³⁴ other powers and duties are vested in him that may have an important bearing on the conduct of war;³⁵ while still other clauses of the Constitution not referring directly to the President may by necessary implication add to his war powers.³⁶ Other of the President's powers with regard to war are derived from international law and practise, are conferred by statute, or are established as a result of custom and usage. To define more clearly these war powers of the President, to determine their nature and source, and to discover the manner of their exercise, is the purpose of this study.

The most common forms through which the President in person exercises his powers, are by proclamations and executive orders, the former generally containing announcements and decisions of the widest interest and broadest scope, the latter usually concerning matters not of such general interest. Either may be issued as a result of express or implied statutory authorization, or by virtue of the President's constitutional position as Chief Executive. The great increase in the number of these proclamations and executive orders issued in war time is also an excellent indication of the growth of the war powers of the Executive over his power in time of peace.

Other forms of presidential action include rules and regulations issued under statutory authority or by virtue of the President's constitutional power; directions, instructions, or orders to heads of departments and other agencies; and decisions on

³³ Fairlie, *National Administration of the United States*, 33; cf. Von Holst, *Constitutional Law of the United States*, 193.

³⁴ Art II, Sec. 2, Cl. 1 (commander-in-chief).

³⁵ Art I, Sec. 7, Cl. 2, 3 (sign and veto bills); Art II, Sec. 1, Cl. 8 (oath of office); Sec. 2, Cl. 1 (power of pardon); Sec. 2, Cl. 2 (power with regard to foreign relations and appointment of officers); Sec. 3 (recommmend measures, call special session, and execute the laws).

³⁶ Art. I, Sec. 9, Cl. 2 (habeas corpus); Art IV, Sec. 4 (guaranty of republican government and of protection).

matters requiring his approval or coming to him through appeals from the decisions of subordinate officials. Finally, the commissioning of officers appointed by him with or without the consent of the Senate, the recommendation of measures to Congress, and the signing or vetoing of bills, may be included among the means through which the President exercises his authority, and which must be considered in connection with this study of his powers.³⁷

Not all of the acts required of the President can possibly be performed by him personally, and the courts have definitely recognized that he may act through the heads of departments. "The President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties," and the acts of the heads of departments are "in legal contemplation the act of the President."³⁸

It has also been held that heads of departments may in turn act through subordinate officials in the departments;³⁹ but the question as to how far this delegation of power may be carried and still be considered the act of the President seems as yet to be unsettled by the courts. It has been pointed out that most orders and regulations are in fact prepared by subordinate officials in the several departments, altho issued in the name of the head of the department or in the name of the President; and also that in some cases, and especially during the recent war, such orders and regulations have been issued by subordinate officials, acting by authority of the head of the department, in matters where the statutes vested the power in the President.⁴⁰ This practise, undoubtedly becoming more common, opens up a vast new field for a study of the exercise of Presidential powers. Since, however, as has been suggested, it is still an open question how far such exercise of authority by subordinate officials can be considered as the act of the President, this study makes no attempt to include any exercise of power but by the President himself, or for which he may clearly be immediately responsible.

³⁷ Cf. Fairlie, *National Administration of the United States*, 41-42.

³⁸ *Wilcox v. Jackson*, 13 Pet., 498, 513 (1839); *United States v. Eliason*, 16 Pet., 291 (1842).

³⁹ *United States v. Warfield*, 170 Fed. Rep., 43 (1909).

⁴⁰ J. A. Fairlie, in *Michigan Law Rev.*, XVIII, 188 (Jan., 1920).

I. Powers Relating to the Beginning of War

CHAPTER II

CONTROL OF FOREIGN RELATIONS

The function of managing the foreign relations may be classified into two distinct branches: (1) the power of intercourse, intercommunication, and negotiation; (2) the power of entering into formal or binding international compacts.¹ The latter power is shared by the President with the Senate,² but the former belongs exclusively to the President. "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."³

Altho diplomatic negotiations and intercourse are regularly conducted through the Department of State, the acts of that department are in legal contemplation the acts of the President,⁴ and, in fact, the Department of State has generally been recognized as having a special status, as being more directly subject to the control of the President than any other department. This was clearly set forth by Senator John C. Spooner in a speech before the United States Senate on January 23, 1906, when he said: "The act creating the Department of State in 1789, was an exception to the acts creating the other Departments of the Government. . . . It is a Department which from the begining the Senate has never assumed the right to direct or control, except as to clearly defined matters relating to duty imposed by statute and not connected with the conduct of our foreign relations. We direct all the other heads of De-

¹ Pomeroy, *Constitutional Law* (Bennett's ed.), 564; Fairlie, *National Administration of the United States*, 29-30.

² *Constitution*, Art. II, Sec. 2, Cl. 2.

³ John Marshall, in House of Representatives, Mar. 7, 1800. *Annals of Cong.*, 6 Cong., 613; cf. Pomeroy, *op. cit.*, 564; Corwin, *The President's Control of Foreign Relations*, 33.

⁴ *Jones v. United States*, 137 U. S., 202, 217 (1890); Crandall, *Treaties: Their Making and Enforcement* (2nd ed.), 93.

partments to transmit to the Senate designated papers or information. We do not address directions to the Secretary of State. We direct requests to the real head of that Department, the President of the United States, and, as a matter of courtesy, we add the qualifying words, 'if in his judgment not incompatible with the public interest.' " ⁵

This control which the President exercises over our foreign relations has, with regard to his war power, several principal phases. In the first place, it gives the President the whole power of initiating and formulating the foreign policy of the government, and virtually of committing the nation to its execution. Jefferson expressed this idea in a letter to M. Genet, November 22, 1793: "He (the President) being the only channel of communication between this country and foreign nations, it is from him alone that foreign nations or their agents are to learn what is or has been the will of the nation; and whatever he communicates as such, they have the right, and are bound to consider as the expression of the nation." ⁶ Ex-President Taft, referring to the President's power of conducting the diplomatic correspondence, expressed the same thought in the following words: "He is bound in such correspondence to discuss the proper construction of treaties. He must formulate the foreign policies of our government. He must state our attitude upon questions constantly arising. While strictly he may not bind our government as a treaty would bind it, to a definition of its rights, still in future discussions foreign Secretaries of other countries are wont to look for support of their contentions to the declarations and admissions of our Secretaries of State in other controversies as in a sense binding upon us. There is thus much practical framing of our foreign policies in the executive conduct of our foreign relations." ⁷ President Wilson has put the case for the President even more strongly: "One of the greatest of the President's powers (is) . . . his control, which is very absolute, of the foreign relations of the nation. The initiative in foreign affairs, which the President possesses without any restriction whatever, is virtually the power to control them absolutely. The

⁵ *Cong. Record*, 59 Cong., 1 Sess., 1420; cf. Ogg & Beard, *National Governments and the World War*, 97.

⁶ *Am. State Papers, For. Rel.*, I, 184.

⁷ *Our Chief Magistrate and His Powers*, 113.

President cannot conclude a treaty with a foreign power without the consent of the Senate, but he may guide every step of diplomacy, and to guide diplomacy is to determine what treaties must be made, if the faith and prestige of the government are to be maintained. He need disclose no step of negotiation until it is complete, and when in any critical matter it is completed the government is virtually committed. Whatever its disinclination, the Senate may feel itself committed also.”⁸

This power of the President has also been definitely upheld by the Supreme Court,⁹ and there can thus be no question as to his right and power under ordinary circumstances to initiate and formulate such diplomatic policies as he may deem proper, and virtually commit Congress and the country to their execution. It is also freely conceded by authorities that the Executive Department, by means of this branch of its power over foreign relations, “holds in its keeping the safety, welfare and even permanence of our internal and domestic institutions.”¹⁰ This fact, that policies leading to disturbed relations with other powers and even endangering the peace and safety of the country may be, and in fact have been, adopted at the will of the Executive, has led to considerable discussion as to the propriety of entrusting the sole responsibility for these matters to the President. The question has been raised whether, in view of the power of Congress to declare war, the President is under a constitutional obligation not to formulate and prosecute such diplomatic policies as might incur the risk of war, or whether, in case grave consequences are feared, he should not at least advise and consult with Congress.

The idea that the President is under some such obligation has been brought forward on several occasions. It was raised in 1826, when the proposal of President Adams to send representatives to the Panama Congress¹¹ aroused the opposition of such senators as Hayne, Woodbury, White, Van Buren, and Benton,

⁸ *Constitutional Government*, 77-78; See also President Wilson's letter to Senator Fall, Dec. 8, 1919. *Infra*, 35-36; S. E. Baldwin, in *Yale Rev.*, IX, 407.

⁹ *Foster v. Neilson*, 2 Pet., 253, 309 (1829); *Williams v. Suffolk Insurance Company*, 13 Pet., 415, 420 (1839).

¹⁰ Pomeroy, *op. cit.*, 565.

¹¹ Richardson, *Messages and Papers of the Presidents*, II, 318-320.

largely on the ground that this Congress was to be really a congress of belligerents, and that the United States, by taking part, would compromise its neutrality, become involved in "entangling alliances," and incur the risk of war with Spain.¹² Their sentiments were expressed by Van Buren (later President), when he said: "It is, then, the design of the Executive to enter into an agreement at the Congress . . . that if the powers of Europe make common cause with Spain, or otherwise attempt the subjugation of Spanish America, we shall unite with the latter, and contribute our proportion to the means necessary to make the resistance effectual; and further, that we shall bind ourselves, at that Congress, as to the manner in which we shall resist any attempts, by the European powers, to colonize any portion of this continent." Such a proposal he characterized as "a measure by which the the peace of the country is to be exposed to a contingency beyond the control of our Government — by which the great question of peace or war will be taken from the Representatives of the people — by which, instead of retaining that freedom of action which we now possess, we shall bind ourselves, in a certain event, to pursue a certain course, whatever those, to whom the Government of the country may have been committed, shall think the honor or interest of the country may require."¹³

In the House of Representatives there was likewise considerable opposition to the President's proposal on the same grounds. Thus Mr. Rives spoke of the result of our participation in the Congress as "most probably the adoption of measures endangering the future peace of the country," and of the President's declaration with regard to foreign interference in the affairs of South America as "a conditional, or, to use a more diplomatic phraseology, a provisional declaration of war;"¹⁴ while Mr. Hamilton remarked, "We have become, at the exclusive will of the President, the arbitrator of the New World, and, in that character, have sent bullying protests to the old. The Cabinet has, in our name, made two solemn contracts, to go to war in two contingencies, without, 'as a matter of preliminary advisement,' even condescending to consult us."¹⁵ Others spoke to the same

¹² Benton's *Debates*, VIII, 423, 425, 435, 436, 441, 446, 450, 462.

¹³ *Ibid.*, 446-447.

¹⁴ *Ibid.*, IX, 107, 111.

¹⁵ *Ibid.*, 136.

effect, and an attempt was even made to instruct the envoys to the Congress by attaching conditions to the resolution providing for the mission.¹⁶

These conditions were vigorously opposed in the House by Webster and others as an invasion of the power of the President to instruct ministers,¹⁷ and were eventually voted down.¹⁸ There was, however, considerable sentiment to the effect that while there was no power in the House to issue instructions either to the President or to ministers, still the House, through its power of granting or refusing appropriations, might exercise a restraint upon foreign diplomatic intercourse—a power which should, however, be exercised only when the policy of the Executive was clearly tending to involve the country in war.¹⁹ Senator Johnston (of Louisiana) probably best summed up the position of the President and his supporters when he said: “There is nothing peculiar in the present case. The President has, at all times, the power to commit the peace of the country, and involve us in hostilities, as far as he has power in this case. To him is confided all intercourse with foreign nations. To his discretion and responsibility is intrusted all our delicate and difficult relations: all negotiations and all treaties are conducted and brought to issue by him.”²⁰ Even Van Buren, who had spoken against the mission, admitted that, no matter what action the Senate or Congress might take, the President could still constitutionally provide for such mission on his own authority.²¹

Whether or not the Panama mission of 1826 actually carried with it the dangers attributed to it by its opponents may still

¹⁶ Benton's *Debates*, IX, 91.

¹⁷ *Ibid.*, 94-95, 101, 115, 150.

¹⁸ *Ibid.*, 217, 218.

¹⁹ See, for example, remarks of Mr. Thompson. *Ibid.*, 182.

²⁰ *Ibid.*, VIII, 439.

²¹ *Ibid.*, 441. “But though neither Congress nor the court may direct the President in the discharge of his constitutional powers, yet either the Senate or the House separately, or both concurrently, may pass resolutions expressive of their desires in relation to questions of an international character, and the President may give such resolutions any weight he chooses, notwithstanding that they have no legal effect. Indeed, it is a part of the President's discretion to pay heed to such resolutions or not, as he elects.” Corwin, *The President's Control of Foreign Relations*, 40.

be a matter of some dispute, but is of little consequence to this study. The important point to be noted, on which both advocates and opponents of the mission were agreed, is that, if it was within the power of the President alone to decide upon a certain diplomatic policy, such as this mission, it was likewise within his power, and his alone, to determine whether or not its consequences might involve the peace and safety of the country. The President having made his decision and carried out his policy, Congress and the country would be committed to it, regardless of consequences.

This power of the President has been demonstrated in actual practise again and again. During a period of about twenty-five years (1823-1849), the Cuban policy of the Executive was consistently friendly to Spain and a guaranty of Spanish sovereignty; after the Mexican War that was changed to a policy whose chief end was the acquisition of Cuba by the United States, and in the development of which American diplomacy has been characterized as "aggressive and intolerant;" while during the period after the Civil War, it was again changed to a policy of commercial and humanitarian interest, culminating finally in actual intervention and war.²²

President Grant's handling of the *Virginus* incident in 1873, President Cleveland's of the Venezuelan affair of 1895, and President Wilson's of the Mexican situation throughout the entire course of his administration, illustrate the power of the President both to bring on and to avert diplomatic crises.²³ Mention need only be made of such events as Washington's neutrality

²² Benton, *International Law and Diplomacy of the Spanish-American War*, 14-20; Rhodes, *History of the United States*, II, 350-354. See message of President Cleveland to Congress, Dec. 7, 1896; and President McKinley's statement of the grounds for intervention, in his message of Apr. 11, 1898. Richardson, *op. cit.*, IX, 719-721; X, 147.

²³ Rhodes, *op. cit.*, VII, 29-36; Chadwick, *Relations of the United States and Spain: Diplomacy*, 314-357. "In an hour, by this executive act (Cleveland's action in the Venezuelan affair), we are brought face to face with a question of war with the leading power in Europe, and the danger of it passes away through a diplomatic correspondence, for the issue of which the President was again alone responsible. The very ground of our interference in this quarrel of Venezuela — what was it but a doctrine proclaimed, and indeed invented, by a President of the United States? The Monroe Doctrine has laid down the law for our hemisphere, and it was the single act of the executive department." Baldwin, *Modern Political Institutions*, 105-106.

policy, the Monroe Doctrine, the annexation of Texas, the Mexican War, the Alabama Claims settlement, the acquisition of the Panama Canal, the Big Stick doctrine, our entrance into the war with Germany — “all these, and many more.” says Corwin, “must be set down to the credit of executive leadership in the field of foreign relations.”²⁴

It may therefore be asserted that the President, through his control of diplomatic intercourse, holds in his keeping the peace and safety of the United States, that he may initiate such diplomatic policies and so conduct diplomatic negotiations as to force the country into a war, “without any possibility of hindrance from Congress or the Senate.”²⁵

A second phase of the President's control of foreign relations that should be considered in this connection is his power to recognize the belligerency or independence of new states and governments. This power of recognition is not expressly granted by the Constitution, but is implied from the general power to enter into diplomatic relations with foreign countries through the making of treaties and the exchange of accredited envoys.²⁶ It is not conferred in terms upon any one department of the government, but is now generally conceded as belonging to the Executive.²⁷ In practise, recognition has always been extended as the exclusive act of the President.²⁸

²⁴ *The President's Control of Foreign Relations*, 126; cf. Ford, *Rise and Growth of American Politics*, 279, 280.

²⁵ Fairlie, *National Administration*, 30; Pomeroy, *Constitutional Law*, 565.

²⁶ *Constitution*, Art. II, Sec. 2, Cl. 2; Sec. 3; cf. Taft, *Our Chief Magistrate and His Powers*, 112-113; Story, *Commentaries on the Constitution*, II, 370-371. For a more extended discussion of this question, see an article by the writer, “The Power of Recognition,” in *Am. Jour. Int. Law*, XIV, 519-539 (Oct., 1920).

²⁷ In several cases the courts have declared the power of recognition to be vested in the “political department” of the government, without indicating clearly whether the executive or legislative department, or both, was meant. *Rose v. Himely*, 4 Cr., 241 (1801); *Gelston v. Hoyt*, 3 Wheat., 246, 324 (1818); *Foster v. Neilson*, 2 Pet., 253, 307 (1829); *Jones v. United States*, 137 U. S., 202, 212 (1890). However, in other cases, both the language and tone of the decisions are such as to show that the executive department is meant. *United States v. Hutchings*, 2 Wheeler's Criminal Cases, 543, cited in *Sen. Doc. No. 56*, 54 Cong., 2 Sess., 24; *Williams v. Suffolk Insurance Company*, 13 Pet., 415, 420 (1839); *Kennett v. Cham-*

New states generally come into existence by breaking off from an actually existing state, and altho recognition even in such cases is "a normal act, quite compatible with the maintenance of peaceful intercourse with the mother-country," provided the new community has actually won its contest and successfully maintained its independence and separate existence,²⁹ authorities agree that premature recognition is a wrong done to the parent state, that it amounts to an act of intervention, and may properly be considered by the parent state as a cause for war.³⁰ Through the exercise of this power the President is thus upon occasion enabled to determine the question of peace or war for the United States.

bers, 14 How., 38, 46, 50-51 (1852); *United States v. Trumbull*, 48 Fed. Rep., 99, 104 (1891); *The Stata*, 56 Fed. Rep., 505, 510 (1893).

See also *Senate Document No. 56*, 54 Cong., 2 Sess., containing a report of the Senate Committee on Foreign Relations, presented to the Senate Jan. 11, 1897, in which, after an exhaustive investigation into the whole subject of recognition, it was held that the power of recognition rested properly with the President. In 1864, the Mexican situation brought about the passage of a House resolution declaring that "Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States, as well in the recognition of foreign powers as in other matters;" and in 1896, a concurrent resolution was passed recognizing a state of war in Cuba and offering the good offices of the United States for the recognition of Cuban independence. These resolutions were ignored by Presidents Lincoln and Cleveland, respectively, on the ground that recognition was a matter for the Executive alone. *Cong. Globe*, XXXV, Pt. I, 65, 67; Latané, *America as a World Power*, 9.

The joint resolution of 1898 authorizing intervention in Cuba, declared "That the people of the island of Cuba are, and of right ought to be, free and independent;" but authorities hold that this is a mere statement of policy and not to be regarded as a claim by Congress to the power of recognition. Benton, *International Law and Diplomacy of the Spanish-American War*, 99; Corwin, *The President's Control of Foreign Relations*, 80-81.

Senator King (Utah) proposed a Senate resolution, May 23, 1919, for the recognition of the Omsk government of Russia, which seems to have been buried in committee. *Cong. Record*, 66 Cong., 1 Sess. (May 23, 1919), 154.

²⁸ For the manner in which recognition has been extended to other countries by the United States, see *Senate Document No. 49*, 51 Cong., 2 Sess.

²⁹ Lawrence, *Principles of International Law* (6th ed.), 88.

³⁰ *Ibid.*; Hall, *International Law* (6th ed.), 83; Moore's *Digest of International Law*, I, 73.

The serious responsibility thus resting upon the President has been recognized on several occasions. When the South American provinces were clamoring for recognition in 1817, President Monroe, altho sympathetic with their aspirations, evidently feared possible complications with Spain,³¹ and in spite of pressure from Clay and his following in Congress,³² declined to recognize these new states until he was satisfied that Spain would not resent the act with war.³³

President Jackson, curiously enough, was likewise extremely cautious about arousing the hostility of Mexico through a premature recognition of Texas, declined to receive the Texan commissioners sent to Washington in March, 1836, to ask for recognition,³⁴ and apparently was unwilling to take the sole responsibility in cases involving possible international complications. Referring to the Texas situation in his message of December 21, 1836, he spoke of the acknowledgment of a new state as independent as "at all times an act of great delicacy and responsibility, but more especially so when such state has forcibly separated from another of which it had formed an integral part and which still claims dominion over it. A premature recognition under these circumstances, if not looked upon as a justifiable cause of war, is always liable to be regarded as proof of an unfriendly spirit to one of the contending parties." He therefore

³¹ See memorandum of questions submitted to his Cabinet, Oct. 25, 1817. *Writings of James Monroe*, VI, 31.

³² Clay in 1817 mounted what John Quincy Adams called "his South American great horse," and by means of resolutions proposed by himself and his followers, kept the question of recognition of these provinces constantly before Congress from 1818 to 1822, in an effort to force the hand of the President. *Memoirs of John Quincy Adams*, IV, 28; *Annals of Cong.*, 15 Cong., 1 Sess., II, 1468, 1569, 1646, 1652, 1655; *ibid.*, 16 Cong., 1 Sess., II, 2223, 2229-2230; 2 Sess., 1071, 1077, 1081, 1091-1092; *ibid.*, 17 Cong., 1 Sess., I, 854, 982.

³³ "The delay which has been observed in making a decision on this important subject will, it is presumed, have afforded an unequivocal proof to Spain, as it must have done to other powers, of the high respect entertained by the United States for her rights and of their determination not to interfere with them. . . It may be presumed that the successful progress of the revolution through such a long series of years. . . will reconcile the parent country to an accommodation with them on the basis of their unqualified independence." Message to Congress, Mar. 8, 1822. Richardson, *op. cit.*, II, 116-118.

³⁴ Reeves, *American Diplomacy under Tyler and Polk*, 78.

announced that he considered it "with the spirit of the Constitution and most safe," that the power of recognition, when probably leading to war, should be exercised "with a previous understanding with that body by whom alone war can be declared, and by whom all provision for sustaining its perils must be furnished." ³⁵

The Senate Committee on Foreign Relations, in its report of January 11, 1897, already mentioned,³⁶ altho strongly upholding the President's right to the power of recognition, emphasized also the dangers involved in the exercise of that power, since the older nation might regard such recognition as a cause of war. The question whether a nation should recognize another, and thus risk going to war with a third, was stated to be largely a question of expediency, of which the Executive was the best qualified to judge, tho it was added that "if recognition of such independence is liable to become a *casus belli* with some foreign power, . . . it is most advisable as well as proper for the Executive first to consult the legislative branch as to its wishes and postpone its own action if not assured of legislative approval. If, on the other hand, the Executive did not consider that the time had arrived to act, expressions of opinion by the legislature should be made with some caution."

It seems therefore to be the general consensus of opinion that, while the power of recognition belongs properly to the President, it is a power that may easily involve serious complications with foreign nations, and in such cases should be exercised with due regard for the wishes of that branch of the government whose function it is to declare war. It should be noted, however, that any action of Congress would be merely advisory, that the whole power rests with the President alone. "It is the proper province of the Executive to refuse to be guided by a resolution on the part of the legislature, if, in his judgment, to do so would be unwise. The legislature may express its wishes or opinions, but may not command." ³⁷

³⁵ Richardson, *op. cit.*, III, 266-267.

³⁶ *Senate Document No. 56*, 54 Cong., 2 Sess., 2.

³⁷ Willoughby, *Constitutional Law*, I, 462; *cf.* Corwin, *op. cit.*, 82. "It is not, indeed, a power likely to be abused, though it is pregnant with consequences often involving the question of peace or war. And, in our own short experience, the revolutions in France, and the revolutions in South America, have already placed us in situations to feel its critical character, and the

From his power to receive and send accredited envoys, the President also derives the power to withdraw the diplomatic representatives of the United States at his pleasure, or dismiss those of foreign powers, and thus sever all relations with any particular country — a power which a distinguished authority has said “may be so exercised as to produce most momentous results.”³⁸

This power to sever diplomatic relations is a power that has always been considered as peculiarly within the province of the President, and until very recently no attempt was ever made by Congress to assert any authority in that respect. However, the unsettled condition of affairs in Mexico, and the opinion of some people that President Wilson was being too patient in his handling of Mexican affairs, led to the introduction by Senator Fall (New Mexico), on December 3, 1919, of a concurrent resolution requesting the President to withdraw recognition from the Carranza Government and “to sever all diplomatic relations now existing between this Government and the pretended Government of Carranza.”³⁹

Tho this resolution clearly went beyond the traditional view that the President alone has the entire responsibility for deciding whether or not diplomatic relations should at any time be severed, there seemed to be a disposition on the part of the Foreign Relations Committee of the Senate to recommend it favorably and push it to a vote. President Wilson, however, in a letter of December 8, 1919, to Senator Fall, vigorously asserted the power and responsibility of the Executive in this matter, expressing himself as follows: “I should be gravely concerned to see any such resolution pass the Congress. It would constitute a reversal of our constitutional practice, which might

necessity of having at the head of the government an executive of sober judgment, enlightened views, and firm and exalted patriotism.” Story, *Commentaries*, II, 371.

³⁸ Burgess, *Political Science and Comparative Constitutional Law*, II, 251. Hamilton did not seem to appreciate the tremendous possibilities in the exercise of this power, especially to receive ministers, for he passed it by with this brief comment: “This, though it has been a rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the government.” *The Federalist*, No. 68 (Goldwin Smith ed., pp. 383-384).

³⁹ See text of resolution in *N. Y. Times*, Dec. 4, 1919.

lead to very great confusion in regard to the guidance of our foreign affairs. I am convinced that I am supported by every competent constitutional authority in the statement that the initiative in directing the relations of our Government with foreign Governments is assigned by the Constitution to the Executive, and to the Executive only. Only one of the Houses of Congress is associated with the President by the Constitution in an advisory capacity, and the advice of the Senate is provided for only when sought by the Executive in regard to explicit agreements with foreign Governments and the appointment of diplomatic representatives who are to speak for this Government at foreign capitals. The only safe course, I am confident, is to adhere to the prescribed method of the Constitution. We might go very far afield if we departed from it."⁴⁰

Upon receipt of this letter, Senator Lodge, chairman of the Senate Committee on Foreign Relations, immediately announced that the committee would not push the Fall resolution, but would leave the entire responsibility for the Mexican situation with the President, thus virtually acknowledging the soundness of the President's position.⁴¹

The breaking of diplomatic relations, while not in itself an act of war, and not necessarily resulting in war, is meant to be a marked protest and generally does lead to war.⁴² President Wilson thus understood very well, as did the whole country, that his action, on February 3, 1917, in dismissing the German ambassa-

⁴⁰ *N. Y. Times*, Dec. 9, 1919.

⁴¹ "Of course the committee will do nothing now. The President desires complete responsibility for the Mexican situation to rest on him. Let it rest there. We desired only to assist him; he does not wish us to do so. He does not even allow us to express our support or make a suggestion. The committee will not again consider the resolution. We are through." Statement of Senator Lodge. *N. Y. Times*, Dec. 9, 1919.

⁴² See T. S. Woolsey, "The Beginning of War," *Proc. Am. Pol. Sci. Assn.*, I, 54-68, esp. 57-60.

Diplomatic relations with Brazil were severed in 1827 and with Mexico in 1858, but in each case were very shortly restored without any intervening complications; with Mexico they were broken off also in 1836, and continued broken for three years, without war; relations between Turkey and the United States were severed Apr. 20, 1917, but war was never declared between the two countries. Reeves, *American Diplomacy under Taylor and Polk*, 76; Moore's *Digest*, VII, 103-105; *N. Y. Times Current Hist. Mag.*, VI, 437.

dor to the United States and recalling Ambassador Gerard from Berlin, was very likely the first step towards actual war, altho in his address to Congress on that date he expressed himself as hopeful that further complications might be avoided.⁴³

Finally, the President may to a considerable extent determine questions relating to the peace of the United States through his power to enter into so-called executive agreements with other powers. The Constitution requires that treaties can only be made by the President by and with the advice and consent of the Senate,⁴⁴ but "treaties" by no means include every sort of international arrangement entered into. Agreements of various sorts, some concerning only minor and routine matter, others on matters of considerable importance and delicacy, are frequently made by the President without the knowledge or consent of the Senate, and are by long practise considered to be within the range of his authority.⁴⁵ Such agreements, altho not a part of the "supreme law of the land," as are treaties, nevertheless are considered binding upon the administration making them, but not upon succeeding administrations.⁴⁶ As a matter of fact, most of these agreements covering matters of any considerable importance have been respected by the successors of those making them, and have by general consent come to have the effect of a settled law.

Such executive agreements take the various forms of a protocol, a *modus vivendi*, an exchange of notes or memoranda, or a mere "gentlemen's agreement," and are entered into by the President by virtue of his power as Commander-in-Chief or of his diplomatic powers.⁴⁷ As an example of executive agreements based upon the first class of powers may be mentioned the agreement of 1817 with Great Britain for the limitation of naval armaments on the Great Lakes.

This agreement was brought about by an exchange of notes

⁴³ See text of address in McKinley, *Collected Materials for the Study of the War* (1st ed.), 11-12.

⁴⁴ Art. II, Sec. 2, Cl. 2.

⁴⁵ J. B. Moore, in *Pol. Sci. Quar.*, XX, 388-390; Ogg & Beard, *National Governments and the World War*, 102.

⁴⁶ Butler, *The Treaty-Making Power of the United States*, II, 370; *Angarica v. Bayard*, 127 U. S., 251, 261 (1888).

⁴⁷ Corwin, *The President's Control of Foreign Relations*, 116.

between the British minister at Washington (Mr. Bagot) and the Acting Secretary of State (Mr. Rush), and provided that neither party should keep in service on Lakes Champlain and Ontario more than one, and on Lake Erie and the upper lakes more than two armed vessels, none of these to be armed with more than one cannon, and all other armed vessels of both parties to be dismantled.⁴⁸ Altho President Monroe nearly a year later submitted the arrangement to the Senate for its approval,⁴⁹ this action was merely perfunctory, since the agreement had become effective immediately after the date of the original exchange of notes (April 28-29, 1817), through orders issued by the Secretary of the Navy to the naval officers commanding on the Great Lakes.⁵⁰ The arrangement was definitely undertaken as a measure to preserve the peace between the two countries,⁵¹ and remains to this day as a striking example of what may be done towards that end by purely Executive action.

Another agreement between these two countries of somewhat similar import with respect to armament was entered into by means of a protocol signed at London, December 9, 1850, by the United States minister (Abbott Lawrence) and Lord Palmerston, under which the British government ceded Horseshoe Reef in Lake Erie to the United States, the latter agreeing to erect a

⁴⁸ *Am. State Papers, For. Rel.*, IV, 205-206.

⁴⁹ Message to the Senate, Apr. 6, 1818. *Ibid.*, 202. John Quincy Adams says on Jan. 14, 1818, that the President did not think it necessary to communicate the arrangement to Congress. *Memoirs*, IV, 41. The Senate gave its approval Apr. 16, 1818, following which the President issued a formal proclamation April 28, announcing that the agreement was in effect. *Am. State Papers, For. Rel.*, IV, 207.

⁵⁰ The terms of the agreement were communicated by Mr. Rush to Secretary of the Navy Crowninshield on Apr. 30, 1817, and the necessary orders were issued by the latter May 2. *Ibid.*, 206-207.

⁵¹ "The President (Madison), being satisfied that, if each nation should maintain on the lakes a naval force, it would expose both to considerable and useless expense, while it would multiply the risks of collision between them, instructed Mr. Adams, shortly after the peace, to make the proposals...in the hope that it might be carried into immediate effect." Monroe to Bagot, Aug. 2, 1816. *Ibid.*, 203. "This arrangement for mutual disarmament on the lakes has undoubtedly been the greatest single factor in the continuance of peaceful relations between the United States and Great Britain during the last one hundred years." Updyke, *Diplomacy of the War of 1812*, 465-466.

light-house but to maintain no fortifications. The agreement was ratified by an exchange of notes in London, February 10, 1851, with no formal ratification on the part of either country, and the light-house was erected in 1856 upon the appropriation of the necessary funds by Congress.⁵²

In 1859 a dispute between the United States and Great Britain over the island of San Juan off the Pacific coast, which threatened to cause serious difficulty between the two countries, was settled by an agreement, reached through an exchange of notes, for joint military occupation of the island.⁵³ This arrangement which continued until the entire island was given over to the United States under an arbitral decision in 1873, was upheld by the courts as a proper exercise of Executive authority, even to the extent of modifying, in the interest of peace, existing statutes for the government of the disputed territory.⁵⁴

Perhaps the most remarkable exercise of the President's power to make international agreements without the consent of the Senate, by virtue of his authority as Commander-in-Chief, is the protocol concluded September 7, 1901, between China and the Allied Powers that had intervened during the Boxer uprising. This protocol required reparation for the murder of the German minister, and punishment of the principal authors of the outrages committed against foreigners during the uprising; prohibited to China the importation of arms and ammunition or of materials used exclusively for their manufacture; demanded an indemnity of 450,000,000 taels; constituted an extraterritorial quarter for the foreign legations in Peking; permitted temporary occupation by the Powers of certain strategic points;

⁵² J. B. Moore, in *Pol. Sci. Quar.*, XX, 390.

⁵³ Crandall, *Treaties: Their Making and Enforcement*, 106; Foster, *Practice of Diplomacy*, 321.

⁵⁴ "The power to make and enforce such a temporary convention respecting its own territory is a necessary incident to every national government, and adheres where the executive power is vested... This particular convention should be allowed to modify for the time being the operation of the organic act of this Territory, so far forth as to exclude to the extent demanded by the political branch of the government of the United States, in the interest of peace, all territorial interference in the government of that island." *Watts v. United States*, 1 Wash. Terr., 288, 294 (1870), quoted in Crandall, *op. cit.*, 106-107.

and required numerous undertakings on the part of China, especially with regard to the conduct of her foreign relations.⁵⁵

This protocol was signed on the part of the United States by W. W. Rockhill, whose appointment as special commissioner to China had not been submitted to the Senate; it went into effect without any further ratification, the whole matter thus being carried on and concluded by authority of the Executive alone.

It is now authoritatively recognized that the President, without legislative authority, but solely by virtue of his powers as Commander-in-Chief, may permit or refuse the entry of foreign troops into the United States.⁵⁶ By virtue of the same authority, arrangements were made with Mexico in 1882, through an exchange of notes, for the reciprocal passage of troops across the border in pursuit of hostile Indians. It is worthy of note that the Mexican Executive was distinctly authorized by the Mexican Senate to permit such crossing of troops, while in the United States the terms of the agreement were referred, not to the Senate, but to the General of the Army, and approved by him and the Secretary of War.⁵⁷ These arrangements were renewed at various times,⁵⁸ and form the basis for the attempted agreements of like nature during the border troubles in 1916.⁵⁹ A similar

⁵⁵ See text of protocol in *For. Rel. 1901*, App., 312-318. Foster calls this "probably the broadest exercise of executive authority in foreign matters without the concurrence of the Senate." *Practice of Diplomacy*, 318.

⁵⁶ *Tucker v. Alexandroff*, 183 U. S., 424, 435 (1902). Cf. Washington's refusal to permit British troops to cross United States territory in 1790, and the opinions of his Cabinet on the question. *Writings of George Washington*, XI, 497, n.; *Writings of Thomas Jefferson*, V, 238-239; *Works of Alexander Hamilton*, IV, 20-49; *Life and Works of John Adams*, VIII, 497-500.

⁵⁷ *For. Rel. 1883*, 396-397, 405, 419-426. The memorandum signed by Secretary Frelinghuysen and Minister Romero stated that since the Mexican Senate had authorized the President of Mexico to allow the passing of Mexican troops into the United States and of United States troops into Mexico, "and the Constitution of the United States empowers the President of the United States to allow the passage without the consent of the Senate, this agreement does not require the sanction of the Senate of either country, and will begin to take effect twenty days after this date (July 29, 1882)."

⁵⁸ June 28, 1883; Oct. 31, 1884; Oct. 16, 1885; June 25, 1890; Nov. 25, 1892; June 4, 1896.

⁵⁹ *N. Y. Times Current Hist. Mag.*, IV, 403, 616, 618-619, 627.

arrangement with Great Britain for the reciprocal crossing of the Canadian boundary was proposed by Secretary Frelinghuysen in 1883, but was rejected by Canada on the ground that it involved the "risk of complications worse than that of Indian raids."⁶⁰

Among executive agreements entered into by virtue of the President's diplomatic powers, and dealing with matters causing considerable dispute, difficulty, and possible complications, may be mentioned an agreement of 1885 with Great Britain, reached by an exchange of memoranda, with regard to the fisheries question;⁶¹ a *modus vivendi* with the same country in 1899 fixing a provisional boundary between Alaska and Canada;⁶² the protocol of 1873 settling the Virginius affair with Spain;⁶³ Secretary of War Taft's adjustment of the boundaries of the Panama Canal Zone;⁶⁴ and the Root-Takahira and Lansing-Ishii agreements of 1907 and 1917, respectively.⁶⁵

The action of President Roosevelt in 1905 with regard to

⁶⁰ See report of the Indian Commissioner for the Northwest Territories (Canada). *For. Rel.* 1883, 528.

⁶¹ *For. Rel.* 1885, 460-469. "This agreement proceeds from the mutual good-will of the two governments, and has been reached solely to avoid all misunderstandings and difficulties which might otherwise arise from the abrupt termination of the fishing of 1885 in the midst of the season." Statement of Secretary Bayard. *Ibid.*, 460.

⁶² *For. Rel.* 1899, 328-330.

⁶³ Crandall, *op. cit.*, 107-108.

⁶⁴ "I had no power to make a treaty with Panama, but I did have, with the authority of the President, the right to make rules equivalent to law in the Zone. I therefore issued an order directing the carrying out of the plan agreed upon, in so far as it was necessary to carry it out on our side of the line, on condition that, and as long as, the regulations to be made by Panama were enforced by that government. This was approved by Secretary Hay and the President, and has constituted down until the present day, I believe, the basis upon which the two governments are carried on in this close proximity. It was attacked vigorously in the Senate as a usurpation of the treaty-making power, and I was summoned before a committee in the Senate to justify what had been done. There was a great deal of eloquence over this usurpation by Mr. Morgan and other Senators, but the *modus vivendi* continued as the practical agreement between the nations for certainly more than seven years, and my impression is that it is still in force in most of its provisions." Taft, *Our Chief Magistrate and his Powers*, 111-112.

⁶⁵ *For. Rel.* 1908, 510-512; *Am. Jour. Int. Law*, XII, Supp., 1-3.

Santo Domingo is especially noteworthy in this connection, in that a treaty was first negotiated providing that the United States should guarantee the integrity of that country, take charge of its customs, and settle its obligations; and when this treaty failed of ratification in the Senate, President Roosevelt nevertheless put its terms into effect through a *modus vivendi*. For two years the affairs of that island were administered under the sole authority of this executive agreement, until in 1907 the Senate yielded and ratified a slightly revised treaty.⁶⁸

The President is thus enabled, through his power of entering into these executive agreements which do not require the sanction of the Senate, to assume complete responsibility for the handling of matters of almost every variety in the field of foreign relations, many of which involve complications and delicate questions that might easily affect the peace and safety of the United States.

⁶⁸ Latané, *America as a World Power*, 280-281; J. B. Moore, in *Pol. Sci. Quar.*, XX, 386-387; Roosevelt, *Autobiography*, 551-552.

CHAPTER III

MILITARY MEASURES SHORT OF WAR

By virtue of his position as Commander-in-Chief, as well as by authority of other constitutional and statutory provisions, the President may undertake numerous military measures that are short of actual war. In the first place, there are many instances in which he may employ the armed forces to aid the civil authorities within the United States. Thus, for example, the constitutional clause guaranteeing to every state a republican form of government and protection against domestic violence,¹ is held to give the President power to use troops, without special legislative sanction, when needed for those purposes, and even to anticipate and prevent local disturbances by a show of force.²

In 1878 an attempt was made to restrict the President's power to use the armed forces in executing the laws of the United States through an act of Congress forbidding the employment of the army as a *posse comitatus*, except as expressly authorized by the Constitution or by statute.³ It has been held, however, in spite of that statute, that the provisions of the Constitution vesting the President with the executive power and making it his duty to "take care that the laws be faithfully executed,"⁴ must be construed as giving to the President the general power of enforcing the laws and the "peace of the United States" by any means that he may find necessary.⁵ "Congress may, by dis-

¹ Art. IV, Sec. 4.

² Lieber, *The Use of the Army in Aid of the Civil Power*, 30-37, 45; Winthrop, *Abridgment of Military Law*, (2nd ed.), 336-337. Cf. the sending of troops under Gen. Wood to Gary in 1919 to prevent disorder during the steel strike.

³ Act of June 18, 1878. 20 *Stat. at L.*, 145, 152 (Sec. 15).

⁴ Art II, Sec. 1, Cl. 1; Sec. 3.

⁵ Lieber, *op. cit.*, 14, 37, 40, 55; *Ex parte Siebold*, 100 U. S., 371, 394-395 (1879); *In re Neagle*, 135 U. S., 1, 63-64, 67, 69 (1890). Cf.

banding the Army, render it impossible for the President to resort to his constitutional power as executive and commander-in-chief of employing the Army in aid of the civil power, in the execution of the laws, or may couple an appropriation for the support of the Army with a condition as to the use of the money appropriated; but, if it be true that the Constitution directly vests the President with (this) duty and power . . . Congress cannot make the exercise of such power illegal. It may prevent its exercise, but it cannot make it illegal.”⁶

These constitutional powers are also reinforced by statutory authorization to use the armed forces in aid of the civil power in several specific instances. Thus the President is expressly empowered to employ the land or naval forces to such extent as may be necessary for the protection of civil rights; for carrying out the guarantees to the Indians; for the preservation of the public lands and forests; and for the enforcement of the laws with respect to quarantine, extradition, and neutrality.⁷

In none of these instances should the exercise of his powers by the President cause any difficulties or complications with foreign nations, except in the case of the enforcement of the neutrality laws of the United States. In this connection, mention need only be made of such incidents as Washington's famous neutrality proclamation of 1793,⁸ the Fenian invasion of Canada

President Cleveland's use of troops in Chicago during the railroad strike of 1894, over the protest of Gov. Altgeld.

⁶ Lieber, *op. cit.*, 56-57. See also opinions of ex-Attorney General Miller and Senator Edmunds. *Ibid.*, 15 n., 43; cf. Pomeroy, *Constitutional Law* (Bennett ed.), 537-538.

⁷ *U. S. Rev. Stats.*, Sees. 1984, 1989; 2118, 2147, 2150-2152; 2460, 5596; 4792, 5275; 23 *Stat. at L.*, 322; 31 *ibid.*, 618; 35 *ibid.*, 1088, 1089. These are conveniently listed in *Army Regulations* (ed. 1917), 106-109.

⁸ The first neutrality law of the United States was not passed until 1794, hence Washington's proclamation was based not on statutory authority, but on the obligations of neutrality as defined in the law of nations. *Writings of George Washington*, XII, 281-282. Cf. with Wilson's proclamations of neutrality in 1914. *U. S. Stats.*, 63 Cong., 2 Sess., Pt. 2, Procs., 62 ff. The right of the President to commit the country to a policy of neutrality was vigorously condemned and defended by Madison and Hamilton, respectively, in the famous *Helvidius* and *Pacificus* letters. For pertinent extracts of these letters, as well as for comment upon them, see Corwin, *The President's Control of Foreign Relations*, ch. 1.

in 1866,⁹ the numerous filibustering expeditions against Cuba and other countries,¹⁰ and the strong feeling of the Central Powers against the manner in which the neutrality of the United States was enforced during the the first years of the recent World War, to indicate the delicate nature of the President's responsibility in this regard, and the possible international complications that may result.¹¹

The President has also been empowered on some occasions, and on other occasions has exercised the power without specific authority, to undertake military measures for the protection of the so-called "inchoate" interests of the United States — measures that involve a considerable interference with the rights of other nations and are therefore fraught with serious possibilities. As early as January 15, 1811, a resolution of Congress asserted the peculiar interest of the United States in the Spanish province of Florida and declared, "That the United States, under the peculiar circumstances of the existing crisis, cannot, without serious inquietude, see any part of the said territory pass into the hands of a foreign Power; and that a due regard to their own safety compels them to provide, under certain contingencies, for the temporary occupation of the said territory; they, at the same time, declare that the said territory shall, in their hands, remain subject to future negotiation."

Following out the sentiment of this resolution, an act of the same date authorized the President, by means of the military and naval forces, to take possession of, hold, and occupy the terri-

⁹ For an excellent account of this incident, together with the complications it involved, see Oberholtzer, *History of the United States since the Civil War*, I, 524-537, esp. 528, 532, 534-535.

¹⁰ Latané, *America as a World Power*, 8-9; Chadwick, *Relations of the United States and Spain: Diplomacy*, 411-426; Smith, *Parties and Slavery*, 251-256.

¹¹ President Polk in 1848 found it difficult to reconcile his frank sympathy for the Irish with his duty to enforce the neutrality laws against American citizens aiding the Irish revolt, and when called upon by the British government to act, hesitated in the hope that the issue might be evaded. With regard to the expedition of the so-called "Buffalo Hunters" against Mexico in the same year, he had no such qualms, but immediately sent instructions to Gen. Taylor to use such military force as was necessary to check the movement. *Diary of James K. Polk*, IV, 104-106, 109, 112.

tory of East Florida, if necessary to prevent its occupation by any foreign government, and to establish a temporary government over that region; while another act of February 12, 1813, authorized him to take similar action with regard to West Florida.¹²

As a result of these acts, Amelia Island in East Florida, captured from the Spanish in 1811 by a party of so-called "patriots," assisted by a few American troops and gun-boats, was held by the United States and subject to regulations imposed by American officers for more than a year; while in West Florida, the city of Mobile was seized by General Wilkinson in 1813, under orders from the President, and never surrendered.¹³

Again in 1819, the treaty ceding Florida to the United States having been signed, but not yet ratified by Spain. President Monroe suggested to Congress that the interests of the United States in Florida were such that he should be authorized to occupy that territory and carry out the provisions of the treaty as if it were in effect.¹⁴ Military measures for the occupation of Florida were contemplated, even to the extent of reducing St. Augustine by "regular siege," if necessary,¹⁵ but fortunately for the peace of the two countries, Congress did not see fit at that time to authorize such action.¹⁶

¹² These are the famous "secret laws" referred to by John Quincy Adams as "those singular anomalies of our system which have grown out of that error in our Constitution which confers upon the legislative assemblies the power of declaring war." He also says that there are four of these secret laws and one resolution; "and one of the laws, that of 25th June, 1812, is so secret that this day it could not be found among the rolls at the Department." *Memoirs*, IV, 32 (Dec. 30, 1817). The act of 1812 referred to by Adams has apparently not yet been found or published, while the fourth law to which he refers is probably that of Mar. 3, 1811, which placed the ban of secrecy on these acts, including itself. The injunction of secrecy was removed July 6, 1812, but the laws were not published until 1818. See *Annals of Cong.*, 15 Cong., 1 Sess., II, App., 2601-2604.

¹³ Thomas, *Military Government in Newly Acquired Territory of the United States*, 55-56.

¹⁴ Message of Dec. 7, 1819. Richardson, *Messages and Papers of the Presidents*, II, 57; cf. *Memoirs of John Quincy Adams*, IV, 480.

¹⁵ Jameson, "Calhoun Correspondence," in *Report, Am. Hist. Assn.*, 1899, II, 164-165, 165-166.

¹⁶ The act for carrying the treaty into effect was passed Mar. 3, 1821, while the exchange of ratifications occurred in February.

The right of the President to undertake military measures for the protection of these "inchoate interests" of the United States, even without legislative sanction, was apparently first asserted in 1844. In that year President Tyler, having entered into negotiations with Texas for its annexation to the United States, ordered such a concentration of the land and naval forces as to protect Texas against the danger of a Mexican invasion while the treaty of annexation was under consideration in the Senate.¹⁷ In response to a Senate resolution of inquiry, the President defended his action by declaring it as his opinion "that the United States having by the treaty of annexation acquired a title to Texas which required only the action of the Senate to perfect it, no other power could be permitted to invade and by force of arms to possess itself of any portion of the territory of Texas pending your deliberations upon the treaty without placing itself in a hostile attitude to the United States and justifying the employment of any military means at our disposal to drive back the invasion."¹⁸

In spite of vigorous denunciation of this action in Congress and a threat of impeachment against President Tyler,¹⁹ the same doctrine of an inchoate interest in Texas was advocated by President Polk. He declared that "the moment the terms of annexation offered by the United States were accepted by Texas the latter became so far a part of our country as to make it our duty to afford such protection and defense;"²⁰ and therefore,

¹⁷ Corwin, *The President's Control of Foreign Relations*, 156; Reeves, *American Diplomacy under Tyler and Polk*, 169; Richardson, *op. cit.*, IV, 317.

¹⁸ Message to Senate, May 15, 1844. Richardson, *op. cit.*, IV, 317.

¹⁹ Reeves, *op. cit.*, 163. Senator Benton replied to the President's message as follows: "This is a reversal of the power of the Senate, and a reading backwards of the Constitution. It makes an act of defeasance from the Senate necessary to undo a treaty which the President sends to us, instead of requiring our assent to give it validity. It assumes Texas to be in the Union, and protected by our Constitution from invasion or insurrection, like any part of the existing States or Territories; and to remain so till the Senate puts her out by rejecting the treaty! This, indeed, is not merely reading, but spelling the Constitution backwards! It is reversing the functions of the Senate and making it a nullifying, instead of a ratifying body." *Cong. Globe*, XIII, App., 498 (28 Cong., 1 Sess., June 1, 1844).

²⁰ Message to Congress, Dec. 2, 1845. Richardson, *op. cit.*, IV, 388.

in May, 1845, he ordered General Taylor to cross into Texas to protect it pending annexation.²¹ Clearly, the action of President Polk had more basis than that of President Tyler. Tyler considered himself empowered to protect territory whose acquisition was merely proposed in a treaty not yet ratified, and which, in fact, failed of ratification; while Polk's action had at least the justification that the annexation of Texas was then an assured fact, altho at that time not formally in effect.

President Grant's policy with regard to Santo Domingo (1869-1871) likewise involved the principle of an inchoate interest on the part of the United States which the President was empowered to protect. Having negotiated with President Baez a treaty of annexation by a most unusual method and almost without the knowledge of his Cabinet, Grant sent a strong naval force to the island to protect it from invasion and from internal disorder, not only during the consideration of the treaty by the Senate, but even after its rejection,²² on the ground that "the Government of the United States is peculiarly interested in the exemption of the Dominican Republic both from internal commotions and from invasions from abroad."²³

The President's action was severely condemned on the floor of the Senate, especially by such men as Sumner and Schurz. Schurz declared the doctrine that the President could, by making a treaty, create an inchoate right to some foreign territory, and then, without authority from Congress, commit acts of war for the enforcement of that inchoate right, to be "the hugest absurdity, the most audacious preposterousness, the most mischievous, dangerous, and anti-republican doctrine that ever was broached on the floor of the Senate."²⁴

Senator Sumner likewise bitterly scored the action of the President, and offered a resolution condemning the employment of the Navy without the authority of Congress against a friendly foreign nation or in belligerent intervention in the affairs of a

²¹ Richardson, *op. cit.*, IV, 388-389; Reeves, *op. cit.*, 277.

²² Rhodes, *History of the United States*, VI, 346-354; Corwin, *op. cit.*, 158. For Grant's instructions to the U. S. naval officers, see Moore's *Digest of International Law*, I, 278.

²³ Secretary of State Fish to Mr. Bassett, minister to Hayti, Nov. 16, 1870. Moore's *Digest*, I, 279. The treaty had been rejected June 30, preceding.

²⁴ *Cong. Globe*, 42 Cong., 1 Sess., Pt. II, App., 52.

foreign nation, as "an infraction of the Constitution of the United States and a usurpation of power not conferred upon the President." The resolution further declared, "That while the President, without any previous declaration of war by act of Congress, may defend the country against invasion by foreign enemies, he is not justified in exercising the same power in an outlying foreign island, which has not yet become part of the United States; that a title under an unratified treaty is at most inchoate and contingent, while it is created by the President alone, in which respect it differs from any title created by act of Congress; and since it is created by the President alone, without the support of law, whether in legislation or a ratified treaty, the employment of the Navy in the maintenance of the Government there is without any excuse of national defense, as also without any excuse of a previous declaration of war by Congress." ²⁵

However, other Senators, such as Harlan (Iowa) and Morton (Indiana) came to the defense of the President, and Sumner's resolution was laid on the table by a large majority (38-16),²⁶ so that there would seem to be some point to Professor Corwin's remark about Harlan's argument that it "at least demonstrated the futility of attempting to confine the President's protective function to the mere duty of repelling invasion or immediate physical attack." ²⁷

President Roosevelt's action in 1903 in preventing the interference of Colombia in the Panama revolution was likewise based on the ground of an inchoate interest on the part of the United States in the Panama Canal and therefore in the success of the revolution.²⁸

The President may also on his own authority undertake mili-

²⁵ *Cong. Globe*, 42 Cong., 1 Sess., Pt. II, 294.

²⁶ *Ibid.*, 329.

²⁷ *The President's Control of Foreign Relations*, 160. President Roosevelt's action with regard to Santo Domingo in 1905 was similar to that of President Grant in that the contemplated measures were undertaken even after a treaty authorizing them had been rejected. Roosevelt's action, however, was not based on the doctrine of inchoate interest, but seems to be more properly classified under the policy of police supervision. *Infra*, 54; *cf. also supra*, 41-42.

²⁸ See Jones, *Caribbean Interests of the United States*, 199-203; Roosevelt, *Autobiography*, 553-569.

tary measures for the protection of American rights and interests abroad.²⁹ This power was exercised in 1853 in the famous Koszta incident, when Martin Koszta, a native of Hungary who had become an American declarant (not yet fully naturalized), but who had been seized at Smyrna at the instigation of the Austrian authorities, was released through the vigorous action of an American naval captain in training his guns upon the Austrian vessel on which Koszta was held. The incident caused considerable excitement and was protested by the Austrian government; but Captain Ingraham's action was sustained by public opinion, by Congress, and by the Executive, Secretary of State Marcy laying down the principle that any individual "clothed with our national character" is entitled to claim the protection of this government, "and it may respond to that claim without being obliged to explain its conduct to any foreign power; for it is its duty to make its nationality respected by other nations and respectable in every quarter of the globe."³⁰

Another demonstration of this power occurred a year later (1854), when Greytown (San Juan), in Nicaragua, was bombarded "until the town was laid in ashes," in default of reparation demanded for an attack on the United States consul.³¹ This action was approved and defended before Congress by President Pierce,³² and later upheld by the courts, Justice Nelson declaring that it is to the President, as the Executive head of the Nation, that citizens abroad must look for protection of person and property, and that, for this purpose, "the whole Executive power of the country is placed in his hands, under the Constitution, and the laws passed in pursuance thereof; and different Departments of government have been organized, through which this power may be most conveniently executed, whether by negotiation or force — a Department of State and a Department of the Navy." He further declared that the duty of such interposition abroad, for the protection of the lives or property of the

²⁹ Corwin, *op. cit.*, 142; Root, *Military and Colonial Policy of the United States*, 157-158.

³⁰ Rhodes, *History of the United States*, I, 416-419. The Supreme Court also referred to this incident with approval in a decision rendered some years later. *In re Neagle*, 135 U. S., 1, 64 (1890).

³¹ Rhodes, *op. cit.*, II, 9-10.

³² Message to Congress, Dec. 4, 1854. Richardson, *op. cit.*, V, 280-284.

citizen, "must, of necessity, rest in the discretion of the President." ³³

The attack by American war vessels upon the Barrier forts of China in 1856, in order to avenge an alleged insult to the flag,³⁴ undertaken without authority of Congress, was apparently approved even by the cautious Buchanan, altho further active participation in a military expedition into Chinese territory was declined as beyond the authority of the President alone to undertake. Secretary Cass thus stated the position of the administration: "Our naval officers have the right — it is their duty, indeed — to employ the forces under their command, not only in self-defense, but for the protection of the persons and property of our citizens when exposed to acts of lawless outrage, and this they have done both in China and elsewhere, and will do again when necessary. But military expeditions into the Chinese territory can not be undertaken without the authority of the National Legislature." ³⁵

President Buchanan also, without authority from Congress, ordered a naval force to Cuban waters with directions "to protect all vessels of the United States on the high seas from search or detention by the vessels of war of any other nation." A conflict with Great Britain was avoided only by the latter's abandonment of her claim to the right of visit and search in time of peace.³⁶

Even the qualification upon the President's powers admitted by Secretary Cass in 1857 was abandoned in 1900, when President McKinley, without any express authorization from Congress, sent a naval force under Admiral Kempff and an army of about 5000 men under General Chaffee to China, not merely

³³ 4 Blatchford, 451, 454, quoted in Corwin, *op. cit.*, 144.

³⁴ For account of this affair, see Foster, *American Diplomacy in the Orient*, 225-227.

³⁵ Cass to Lord Napier, Apr. 10, 1857. Moore's *Digest*, VII, 164.

³⁶ Richardson, *op. cit.*, V, 507. Buchanan was, however, curiously inconsistent, deeming it necessary to appeal to Congress for authority to protect American citizens in Nicaragua, New Grenada, and Mexico, and to keep the Panama and Tehuantepec routes of transit open and safe for them. "The executive government of this country," he said, "in its intercourse with foreign nations is limited to the employment of diplomacy. When that fails it can proceed no further. It can not legitimately resort to force without the direct authority of Congress, except in re-

for the purpose of rescuing and protecting the lives and property of American citizens in China, but also to coöperate with the forces of the other Powers in avenging and punishing the murder of the representatives of these Powers that had been killed during the Boxer uprising. Altho the ensuing campaign involved hard fighting and many casualties, the President said that our declared aims "involved no war against the Chinese nation. We adhered to the legitimate office of rescuing the imperiled legation, obtaining redress for wrongs already suffered, securing wherever possible the safety of American life and property in China, and preventing a spread of the disorders or their recurrence."³⁷

A still more recent example of this exercise of the President's power is the action of President Wilson in April, 1914, in ordering a force of sailors and marines to capture Vera Cruz by way of reparation for Huerta's affront to the flag of the United States. This measure, characterized by an eminent historian as "an act of war" which looked to Latin-American countries like "the beginning of a war of conquest" and which was "fiercely resented in Mexico," was undertaken without authority from Congress,³⁸ the city, moreover, being occupied for a period of seven months (until November 23, 1914) by an army of 6000 men under General Funston.³⁹

The power of the President to employ the land and naval forces on his own authority, whether for the purpose of protecting and repelling hostile attacks. . . . Without the authority of Congress the Executive can not . . . , without transcending his constitutional power, direct a gun to be fired into a port or land a seaman or marine to protect the lives of our countrymen on shore or to obtain redress for a recent outrage on their property. . . . Without the authority of Congress the President can not fire a hostile gun in any case except to repel the attacks of an enemy." Richardson, *op. cit.*, V, 516, 539, 570.

³⁷ Message to Congress, Dec. 3, 1900. *For. Rel. 1900*, xiv. For an account of the expedition, see Root, *Military and Colonial Policy of the United States*, 333, 336-347; cf. Taft, *Our Chief Magistrate and His Powers*, 114-115.

³⁸ Vera Cruz was captured Apr. 21, 1914. The next day Congress passed a resolution declaring the use of troops justifiable and disclaiming any purpose to make war. 38 *Stat. at L.*, 770.

³⁹ Ogg, *National Progress*, 293-295.

ing the so-called "inchoate interests" and honor of the United States, or the rights and property of American citizens abroad, has thus been demonstrated in actual practise again and again, and seems also to have been approved by Congress, by the courts, and by public opinion. It seems scarcely necessary to suggest the possibilities of international complications and conflicts that may result from an unwise exercise of this power, and hence the enormous responsibility for the peace of the United States that rests in this way upon the shoulders of the President.

But in addition to these powers of protection, which are, after all, inherent in government, a more recent development of American foreign policy has vested in the President considerable power with respect to intervention and police supervision over the affairs of other nations. The so-called "zone of the Caribbean," because of its proximity and strategic importance to the United States, the unsettled character of the governments in that zone, and the inclination of the United States under the Monroe Doctrine to look with disfavor upon action by any foreign power, is now considered as being under the general police supervision of the United States; the policy of this country having undergone a gradual change from one of sympathetic interest but absolute non-interference in the affairs of these Caribbean states to one of direct and active intervention in their internal affairs.⁴⁰

This power of intervention and police supervision was probably first exercised by President Cleveland in 1885, when during the course of a civil war in Colombia, he sent troops to keep open the transit across the Isthmus of Panama. Altho this action was taken under authority of a provision (Article 35) in the treaty of 1846 with Colombia, its execution, as the President informed Congress, "necessarily involved police control where the local authority was temporarily powerless, but always in aid of the sovereignty of Colombia."⁴¹

The doctrine upon which the exercise of such police control

⁴⁰ Jones, *Caribbean Interests of the United States*, 17-23. See also several articles by P. M. Brown — "Our Caribbean Policy," *Proc. Acad. Pol. Sci.*, VII, 418-422; "American Diplomacy in Central America," *Am. Pol. Sci. Rev.*, VI, supp., 152-163; "American Intervention in Central America," *Am. Jour. Race Development*, IV, 409-426.

⁴¹ Message to Congress, Dec. 8, 1885. Richardson, *op. cit.*, VIII, 326.

might be justified was laid down by President Roosevelt in his message to Congress, December 6, 1904, when he said: "Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power."⁴²

The doctrine here laid down has since been developed into a definite policy largely through numerous military measures undertaken on the sole authority of the President. Thus, in 1905, even before he entered into the executive agreement with Santo Domingo already referred to,⁴³ President Roosevelt directed United States naval forces to interfere and prevent any fighting in that country which might menace the custom-houses.⁴⁴ United States marines have since been landed on several occasions both in Hayti and Santo Domingo to preserve order and to maintain the customs service; since 1912 the latter country has been favored with at least one visit a year from United States cruisers; and in 1916 a military occupation of the island was established that has apparently not yet been abandoned (June, 1920).⁴⁵

⁴² *For. Rel.* 1904, xli.

⁴³ *Supra*, 41-42, 49n.

⁴⁴ "Santo Domingo had fallen into such chaos that once for some weeks there were two rival governments in it, and a revolution was being carried on against each. . . . The situation had become intolerable by the time that I interfered. There was a naval commander in the waters whom I directed to prevent any fighting which might menace the custom-houses. He carried out his orders, both to his and my satisfaction, in thorough-going fashion. On one occasion, when an insurgent force threatened to attack a town in which Americans had interests, he notified the commanders on both sides that he would not permit any fighting in that town, but that he would appoint a certain place where they could meet and fight it out, and that the victors should have the town. They agreed to meet his wishes, the fight came off at the appointed place, and the victors, who if I remember rightly were the insurgents, were given the town."

Roosevelt, *Autobiography*, 549.

⁴⁵ Ogg, *op. cit.*, 261; *Am. Jour. Int. Law*, XI, 394-399; see also *infra*, note 53. Since the above was written, there has been much severe criticism of the continued American occupation of Hayti. See especially a series

In February, 1907, during the course of a war between Nicaragua and Honduras, American warships actively intervened in order to protect life and property from needless destruction and to prevent the spreading of the war, and the American chargé (Philip Marshall Brown) even assumed temporary authority in Honduras when the government fled.⁴⁶ In 1909-1910, by the use of naval vessels and marines, the resignation and flight of an obnoxious president of Nicaragua (Zelaya) was forced and the success of a revolution assured;⁴⁷ while in 1912 and 1914, United States marines again actively intervened in Nicaragua, but on these occasions on the side of the government, to put down revolutions that might otherwise have succeeded.⁴⁸ In Honduras, the joint intervention of American and British marines prevented fighting between the two factions in that country, and secured the election of a provisional president agreeable to both factions;⁴⁹ while only recently an American naval force was again landed in that country to preserve order during a change of government.⁵⁰

In all these numerous instances of intervention and police supervision in the Caribbean zone, the use of the marines has been so common as to warrant the suggestion of a new constitutional principle, that the landing of marines may be considered as a "mere local police measure," while the use of regulars for the same purpose would be an act of war.⁵¹ Intervention is, however, defined in a recent official publication as "an interference by a nation in the affairs of another without the intention of articles by James Weldon Johnson in *The Nation*, Aug. 28, Sept. 4, 11, 1920.

⁴⁶ *For. Rel. 1907*, II, 627-628; P. M. Brown, *op. cit.*, in *Am. Jour. Race Development*.

⁴⁷ *For. Rel. 1909*, 452-459; *ibid.*, 1910, 738-767.

⁴⁸ Jones, *op. cit.*, 176-178; Ogg, *op. cit.*, 261-262. President Taft mentions the intervention of 1912 as "the landing of marines and quite a campaign, which resulted in the maintenance of law and order and the elimination of the insurrectos." He says this was "not an act of war, because it was done at the request and with the consent of the lawful authorities of the territory where it took place." *Our Chief Magistrate and His Powers*, 96.

⁴⁹ P. M. Brown, *op. cit.*, in *Am. Jour. Race Development*, *Am. Pol. Sci. Rev.*

⁵⁰ *N Y. Times*, Sept. 12, 1919.

⁵¹ See Taft, *Our Chief Magistrate and His Powers*, 95.

tion of waging war. It is commonly defended as a police measure by the intervening power, but is often followed by war, and may always be regarded by the second power as an act of war."⁵² Hence, even tho the suggestion of a constitutional principle may be accepted in the United States as justifying the President in his frequent resort to such measures of police control in the zone of the Carribbean, as it apparently has been accepted, this exercise of the President's power may not be so readily accepted by the other countries concerned, but may, on the other hand, be resented by them and lead to serious difficulties and entanglements, if not to actual war.⁵³

Recent events have also shown the possibilities involved in an extension of these powers of intervention and police supervision, even beyond the zone of the Carribbean. The landing of United State bluejackets at Trau in September, 1919, in order to prevent a conflict between the Italians and the Serbs, altho apparently done at the request of the Italian authorities,⁵⁴ was entirely without the previous knowledge or consent of Congress or the Senate.

This use of American forces for police purposes in Dalmatia, and the report that troops were also to be sent to supervise the plebiscites in Silesia and to preserve order in Armenia and elsewhere,⁵⁵ aroused a storm of criticism in Congress. The action in Dalmatia was denounced as against law and preced-

⁵² *War Cyclopedia* (1st ed.), 158.

⁵³ Cf. Jones, *op. cit.*, 190. In the fall of 1919, a commission from Santo Domingo issued a plea for self-government and the abandonment of the American military government; while at about the same time the Spanish government transmitted to Washington a letter from the heads of all the Spanish parliamentary parties, suggesting that the time had come for a termination of the American military occupation of that island. *N. Y. Times*, Sept. 11, 12, 1919.

⁵⁴ See statement of Admiral Knapp, transmitted by Secretary Daniels to the Senate, Oct. 2, 1919, in response to a Senate resolution. *Ibid.*, Oct. 3, 1919.

⁵⁵ *N. Y. Times Current Hist. Mag.*, XI, 225-226 (Nov., 1919). According to press reports a force of American troops was sent to Coblenz with a view to their possible use ultimately to help police the plebiscite in Upper Silesia; but Secretary of War Baker announced that these troops would remain at Coblenz as a part of the garirson there, unless the Senate should ratify the treaty and thus make American participation in the plebiscite strictly legal. See *N. Y. Times*, Nov. 21, 1919.

ent, and Senator Sherman (Illinois) introduced a resolution declaring that the assignment of foreign territory to be policed or guarded by United States forces was beyond the power of the Supreme War Council or the Executive, without the consent of the Senate.⁵⁶

Such a conception of the President's power with regard to the use of the armed forces might have some weight, had the action under criticism been taken in time of peace. Under the circumstances, however, of a continuing state of war, the correct view was undoubtedly stated by Senator Hitchcock (Nebraska) when he said that the action taken with regard to the Dalmatian coast was within the war powers of the President and delegated by him to the Supreme War Council.⁵⁷ The failure of the Senate to take any action on the Sherman resolution would seem to indicate its approval of this view. The incident serves at least to illustrate the possibilities involved in an extension of the sphere within which the President may undertake these military measures without the authority of Congress.

⁵⁶ *N. Y. Times*, Sept. 27, 30, 1919.

⁵⁷ *Ibid.*, Sept. 30, 1919.

CHAPTER IV

POWER OF DEFENSE

A formal declaration is not necessary to constitute a state of war, and is a comparatively unimportant factor in dating the beginning of a war, because it does not necessarily precede hostilities, nor has it in fact often done so. Until recently, a formal declaration of war was not, as a matter of international law, necessary or usual.¹ Most wars during the eighteenth and nineteenth centuries were fought "under the rule of a word and a blow, with the blow coming first and the word possibly left unsaid."² A declaration of war, says Woolsey,³ is "a warning issued by a state to its own people, or to the neutral, that war has begun, and not a warning to the enemy that war will begin at a certain future date. Marking thus a status already existing, it cannot itself originate that status. The outbreak of war gives rise to the declaration, not the declaration to the outbreak. It is the fact of violence, then, and not the declaration of a status, upon which we must really fix our eyes, if we should ask when war begins."

The question then arises, under what circumstances may a war be begun before a formal declaration is made, or even without a formal declaration, and with what branch of the government the power rests to begin such a war.

Authorities agree that the power to begin an offensive war, or a war of aggression, rests in the United States only with Congress, and should properly be preceded by a declaration made

¹ S. E. Baldwin, in *Am. Jour. Int. Law*, XII, 1; Woolsey, *International Law*, sec. 120; Moore's *Digest of International Law*, VII, 171.

² For a list of wars begun without a declaration, see *Am. Jour. Int. Law*, II, 57-62.

³ T. S. Woolsey, "The Beginnings of War," *Proceedings, Am. Pol. Sci. Assn.*, I, 54-68.

by that body.⁴ The Constitution establishes the mode in which this government shall commence wars of its seeking, but the Constitution has no power to prescribe the manner in which others should begin war against us. There is in every nation an inherent power of self-defense, and it is to be presumed that, tho the power to declare a war is by our Constitution clearly vested in Congress, in the absence of such a declaration the Constitution does not leave the nation powerless for defense against attack. Hence it follows, as Whiting says, "that when war is commenced against this country by aliens or citizens, no declaration of war by the government is necessary."⁵

Whiting also contends that the power to begin and wage a war of defense rests clearly with the President. "The fact that war is levied against the United States," he says, "makes it the duty of the President to call out the army or navy to subdue the enemy, whether foreign or domestic. . . . If the commander-in-chief could not call out his forces to repel an invasion unless the Legislative department had previously made a formal declaration of war, a foreign enemy, during a recess of Congress, might send out its armed cruisers to sweep our commerce from the seas, or it might cross our borders and march, unopposed, from Canada to the Gulf before a majority of our Representatives could be convened to make that declaration." He claims that the Constitution, which gives the Legislature authority to declare war whenever initiated by the United States, also imposes upon the President the duty, as commander-in-chief, "to engage promptly and effectually, in war, or, in other words, to make the United States a belligerent nation without a declaration of war or any other act of Congress. whenever he is legally called upon to suppress rebellion, repel invasion, or to execute the laws against armed public resistance thereto."⁶ This

⁴ Whiting, *War Powers under the Constitution*, 39; Burgess, *Political Science and Comparative Constitutional Law*, II, 261; Taft, *Our Chief Magistrate and His Powers*, 95; *Prize Cases*, 2 Black, 635, 668 (1862).

⁵ Whiting, *op. cit.*, 39; *cf.* amendment proposed by the Hartford Convention of 1814, providing for a two-thirds vote of both houses to declare war or authorize hostilities, "except such acts of hostility be in defense of the territories of the United States when actually invaded." *The Federalist* (Ford ed.), Appendix, 689.

⁶ Whiting, *op. cit.*, 39-40; *cf.* Birkhimer, *Military Government and Martial Law* (2nd ed.), 48.

view is supported by Birkhimer,⁷ who admits that a formal declaration of war can be made only by Congress, but says that it is necessary sometimes to prosecute hostilities without such a declaration, and that the President then must act, for the time being, at least, independently of Congress. "When the authorities of the Union are assailed, either by foreign foes, . . . or by domestic ones, . . . it is the duty of the President to repel force with force without waiting for any formal declaration."

The power of the President to begin and carry on a defensive war without a declaration by Congress is also vigorously upheld by the Supreme Court of the United States. In handing down the decision of the court in the famous Prize Cases,⁸ Justice Grier, after admitting the full constitutional power of Congress to declare a national or foreign war, said: "The Constitution confers on the President the whole Executive power. He is bound to take care that the laws be faithfully executed. He is Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several states when called into the actual service of the United States. He has no power to initiate or declare a war either against a foreign nation or a domestic State. But by the Acts of Congress of February 28th, 1795, and 3d of March, 1807, he is authorized to call out the militia and use the military and naval forces of the United States in case of invasion by foreign nations, and to suppress insurrection against the government of a State or of the United States. If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war, although the declaration of it be 'unilateral.'"⁹

⁷ *Military Government and Martial Law*, 47; cf. also Chambrun, *The Executive Power*, 120.

⁸ 2 Black, 635 (1862).

⁹ *Prize Cases*, 2 Black, 635, 668 (1862). Cf. *Talbot v. Johnson*, 3 Dall., 133, 160 (1795): "War can alone be entered into by national authority; it is instituted for national purposes, and directed to national objects. . . . Even in the case of one enemy against another enemy, therefore, there is no color of justification for any hostile act, unless it be authorized by some act of the government giving the public constitutional sanction to it."

That defensive wars are clearly contemplated by the Constitution is shown by the provision which gives to Congress the power "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions."¹⁰ Under that provision, Congress has, by the acts referred to in the Supreme Court decision, and other acts, vested the President with authority to call out and use the militia in the cases contemplated, and in that sense wage a defensive war without further declaration by Congress.

The Supreme Court need not have rested its case, however, solely on those Acts of Congress, but might have gone back to the language and intent of the Constitution itself. The action of the Convention of 1787 is significant in this connection. The Committee on Detail had reported a clause giving to Congress the power "to make war."¹¹ During the discussion over this proposition, it was suggested that the wording of the clause gave Congress practically unlimited control over all the operations of war. Hence Madison and Gerry moved to strike out the word "make" and insert "declare," with the avowed purpose of "leaving to the Executive the power to repel sudden attacks."¹² The suggested change in language was adopted with little opposition, and there would here seem to be some constitutional sanction for the power of the President to wage defensive wars without direct authorization from Congress.

That power of the President is now at least a generally recognized and well established principle of American constitutional law, the validity of which was vigorously asserted in 1907 by our delegates at the Hague Conference. When the proposal was made for an article requiring that hostilities should not begin without a previous warning, in the form of a declaration of war or of an ultimatum accompanied by a conditional declaration of war, the American delegation expressed its entire sympathy with the purport of the article. It called attention, however, to the fact that Congress under the Constitution had exclusive power to declare war, and that the delegation could enter into no agree-

¹⁰ *Constitution*, Art. I, Sec. 8, Cl. 15.

¹¹ *Madison's Journal* (Hunt ed.), II, 82.

¹² *Ibid.*, 188.

ment to modify that power in any way. The statement of the delegation then went on to say: "While this is true as to aggressive military operations, it is proper to say, however, that it has been the unbroken practise of the Government of the United States for more than a century to recognize in the President, as the Commander-in-Chief of the constitutional land and naval forces, full power to defend the territory of the United States from invasion, and to exercise at all times and in all places the right of national self-defense." The delegation announced its willingness to support a proposition favoring a formal declaration of intent to engage in hostilities, providing it were nonmandatory in character.¹³

The power of the President to wage a defensive war without a formal declaration and without specific authorization by Congress is thus, according to all authority, clearly granted, if not in so many words, at least by implication and the inherent purpose of the Constitution. The questions still remain as to what constitutes a defensive war, and to what extent the President may exercise these powers of defense. They are best answered by some references to history.

President Washington had appointed General Wayne to succeed St. Clair in command of the western department, and in the spring of 1794 Wayne was ready to move against the Indians. Meanwhile, the British had established a fort at the rapids of the Miami, twenty miles within American territory, near which the Indians took their stand. The action of the British was, of course, entirely unjustified, and technically constituted an invasion of American territory; but it is not clear that any aggressive act of war was intended. Washington recognized that an attempt to dislodge them would probably bring on a conflict, which he was especially anxious to avoid. He seemed, however, to have no doubts as to his power in that regard, for, after weighing carefully the expediency of such action, and without consulting Congress, the following instructions were issued to Wayne by General Knox, the Secretary of War: "If, therefore, in the course of your operations against the Indian enemy, it should become necessary to dislodge the party at the rapids of

¹³ See article by George B. Davis, "The Amelioration of the Rules of War on Land," in *Am. Jour. Int. Law*, II, 63-77.

the Miami, you are hereby authorized, in the name of the President of the United States, to do it.”¹⁴ Fortunately, Wayne was able to defeat the Indians without becoming officially involved with the British, and a conflict was for the time being averted.

The question of the extent of the President's powers in the case of a war begun by another nation was more clearly raised in Jefferson's administration, with regard to Tripoli. Tripoli had declared war on the United States because of the latter's failure to comply with demands which Jefferson said were “unfounded either in right or in compact.” Jefferson apparently had no doubt of his power to take certain defensive measures without special authority from Congress, for he immediately despatched a small squadron of frigates into the Mediterranean, with orders to protect our commerce against attack. A conflict ensued, as a result of which one of the Tripolitan cruisers was captured together with what remained of her crew. But further than to fight in the strictest defense, Jefferson felt that he had no constitutional authority, and so, as he explained in his message to Congress, “Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, the vessel, being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offense also, they will place our force on an equal footing with that of its adversaries. I communicate all material information on this subject, that in the exercise of this important function confided by the Constitution to the Legislature exclusively their judgment may form itself on a knowledge and consideration of every circumstance of weight.”¹⁵

It is not strange that such a timid attitude should have aroused the wrath of Hamilton, who attacked the President's interpretation of his war powers in his usual vigorous style. He called it a “very extraordinary position” that, tho Tripoli had made a formal declaration of war against the United States and had performed acts of actual hostility, yet there was no power, for want of the sanction of Congress, to capture and detain her crews. That position meant nothing less, he said, than “that between two nations there may exist a state of complete war on

¹⁴ Fish, *American Diplomacy*, 83-84.

¹⁵ Richardson, *Messages and Papers of the Presidents*, I, 327.

the one side — of peace on the other.” Such a position was to him ridiculous. “It is impossible,” he maintained, “to conceive the idea, that one nation can be in full war with another, and this other not in the same state with respect to its adversary. The moment that two nations are, in an absolute sense, at war, the public force of each may exercise every act of hostility, which the general laws of war authorize, against the persons and property of the other. As respects this conclusion, the distinction is only material to discriminate the aggressing nation from that which defends itself against attack. The war is offensive on the part of the state which makes it; on the opposite side it is defensive; but the rights of both, as to the measures of hostility, are equal.” Hamilton then went on to explain the constitutional phrase granting to Congress the power to declare war, “the plain meaning of which,” he said, “is that it is the peculiar and exclusive province of Congress, when the nation is at peace, to change that state into a state of war, whether from calculations of policy, or from provocations, or injuries received: in other words, it belongs to Congress only, to go to War. But when a foreign nation declares, or openly and avowedly makes war upon the United States, they are then by that very fact already at war, and any declaration on the part of Congress is nugatory; it is at least unnecessary. This inference is clear in principle, because it is self-evident, that a declaration by one nation against another, produces at once a complete state of war between both, and that no declaration on the other side can at all vary their relative situation; and in practice, it is well known, that nothing is more common than when war is declared by one party, to prosecute mutual hostilities without a declaration by the other.”¹⁶

Congress felt somewhat as did Hamilton, that a declaration of war would be a useless formality against a horde of pirates, as the Barbary Powers were considered; but to remove the President's scruples, an act was passed empowering him to proceed with hostilities.¹⁷

Jefferson himself was evidently not convinced by the argument of Hamilton, for in 1805, in a confidential message to Congress with regard to the Spanish depredations on United States

¹⁶ *Works of Alexander Hamilton*, VII, 201-204.

¹⁷ McMaster, *History of the People of the United States*, III, 201; Act of Mar. 26, 1804. *Annals of Cong.*, 8 Cong., 1 Sess., App., 1301.

territory, he again asserted the doctrine that only by authority of Congress could any hostile act be performed, beyond the strictest necessities of self-defense. Altho the Spaniards had authorized the inference that it was their intention to advance on our possessions, Jefferson wrote: "Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided. I have barely instructed the officers stationed in the neighborhood of the aggressions, to protect within the borders actually delivered to us, and not to go out of them but when necessary to repel an inroad, or to rescue a citizen, or his property."¹⁸ Congress took no action beyond referring the message to a committee, and hence the inactive and undecided attitude of the government continued.¹⁹

In 1818 the question as to the extent of the power of defense came before the administration in a different and more extreme form. President Monroe strongly asserted his right to take defensive measures against the Indians in the South, even to the extent of pursuing them across the border into Florida, at that time a Spanish possession. "The inability of Spain," he said, "to maintain her authority to fulfill the treaty (of 1795),²⁰ ought not to expose the United States to other and greater injuries. When the authority of Spain ceases to exist there, the United States have a right to pursue their enemy on a principle of self-defense. . . . To the high obligations and privileges of this great and sacred principle of self-defense will the movement of our troops be strictly confined." Acting on these principles, the President had given General Jackson orders which clearly authorized him to enter Florida, but only in the pursuit of the Indians, and had carefully instructed him in that case "to respect Spanish authority wherever it is maintained," and "to withdraw his forces from the province as soon as he shall have reduced that tribe to order. . . ."²¹

¹⁸ *Am. State Papers, For. Rel.*, II, 613; *Annals of Cong.*, 9 Cong., 1 Sess., 18-19.

¹⁹ *Annals of Cong.*, 9 Cong., 1 Sess., 947.

²⁰ Spain had bound herself in this treaty to restrain the Indians from committing hostilities against the United States.

²¹ Message to Congress, Mar. 25, 1818. *Am. State Papers, Mil. Affairs*, I, 681; cf. Jackson's defense of himself. *Ibid.*, 755-757.

General Jackson accordingly carried the campaign against the Indians into Florida, but in so doing came into conflict with the Spanish authorities, and even stormed a Spanish fort and occupied Pensacola. When the subject of his transaction came before the Cabinet for deliberation, John Quincy Adams argued strenuously in support of the proposition that Jackson's acts were justified as purely defensive measures. "My opinion is," he said, "that there was no real, though an apparent, violation of his instructions; that his proceedings were justified by the necessity of the case, and by the misconduct of the Spanish commanding officer in Florida. The question is embarrassing and complicated, not only as involving that of actual war with Spain, but that of the Executive power to authorize hostilities without a declaration of war by Congress. There is no doubt that defensive acts of hostility may be authorized by the Executive; but Jackson was authorized to cross the Spanish line in pursuit of the Indian enemy. My argument is that the question of the constitutional authority of the Executive is precisely there; that all the rest, even to the order for taking the Fort of Barrancas by storm, was incidental, deriving its character from its object, which was not hostility to Spain, but the termination of the Indian war." Jackson's justification was the eminently practical one that an imaginary boundary line could not afford protection to our frontiers from the Indians in Florida, that the Spanish authorities had interfered with the success of his campaign, and that all his operations were founded on those considerations. This argument appealed to Adams, who said that "everything he did was defensive; that as such it was neither war against Spain nor a violation of the Constitution."²²

This seemed to be a rather extreme view of what constitutes a "defensive measure," and Adams was unable to convince the President and the other members of the Cabinet, all of whom were of the opinion that Jackson had acted not only without, but against his instructions; and that he had committed war

²² *Memoirs of John Quincy Adams*, IV, 108, 111. About a year later, Adams advised the President that the occupation of Florida, a measure then proposed, would be "in itself an act of war. It may very probably involve us in a real and very formidable war." He very frankly admits, however, that this opinion did not reflect his real views, but was given in order to secure just that result, since he had discovered that his advice usually resulted in the opposite action being taken. *Memoirs*, IV, 450.

upon Spain, which could not be justified and must be disavowed by the administration. The President supposed, however, that there might be circumstances which would have justified such measures as Jackson had taken, but that he had not made out his case.²³

President Wilson's despatch of a punitive expedition into Mexico after the Columbus raid in March, 1916, involved the exercise of powers of defense similar to those claimed by Monroe in 1818. The expedition was thought to be necessary in order to protect the United States against bandit raids which events had apparently shown the Mexican government too weak to suppress. In a statement to the press, President Wilson announced that the expedition would have the "single object" of capturing Villa and putting a stop to his forays. "This," he said, "can and will be done in entirely friendly aid of the constituted authorities in Mexico and with scrupulous respect for the sovereignty of Mexico."²⁴ Tho the expedition later involved threatening complications with the Mexican authorities, and even some encounters with Mexican troops that resulted in bloodshed,²⁵ it has been justified on the ground that "the President was in this instance but performing his constitutional function of repelling invasion."²⁶

The President has also in another way shown himself able to exercise important powers of defense without express authorization from Congress. When the difficulty with France reached a crisis in 1798, President Adams announced to Congress that he had revoked his former instructions to collectors not to permit the sailing of armed merchant vessels, and thereby indirectly authorized the arming of such vessels as a measure of defense.²⁷ This exercise of executive power was opposed by Jefferson, who looked upon it as a measure leading to war and proposed that there should be "a Legislative prohibition to arm vessels instead of the Executive one which the President informs them he has withdrawn."²⁸

²³ *Ibid.*, 108.

²⁴ See *Am. Jour. Int. Law.* X, Supp., 180, 184.

²⁵ For a brief account, see Ogg, *National Progress*, 297-299.

²⁶ Corwin, *The President's Control of Foreign Relations*, 163, n.

²⁷ Message of Mar. 19, 1798. Richardson, *op. cit.*, I, 265.

²⁸ Jefferson to Monroe, Mar. 21, 1798. *Writings of Thomas Jefferson*, VII, 221.

That suggestion was favored also by Madison, who denounced the action of the President as a usurpation of power. "The first instructions," he said, "were no otherwise legal than as they were in pursuance of the Law of Nations, and consequently in execution of the law of the land. The revocation of the instructions is a virtual change of the law, & consequently a usurpation by the Ex. of a legislative power. It will not avail to say that the law of Nations leaves this point undecided, & that every nation is free to decide for itself. If this be the case, the regulation being a Legislative not an Executive one, belongs to the former, not the latter Authority; and comes expressly within the power, 'to define the law of Nations,' given to Congress by the Constitution."²⁹

While the right of the President to authorize the arming of merchant vessels for defense was thus disputed, the seriousness of such action was not questioned even by his supporters, but on the other hand, it was frankly admitted to be a step leading to war.³⁰

More recently the President's right to exercise this power of arming merchant vessels for defense again became a sharp issue. Germany having announced the renewal of her ruthless submarine warfare, President Wilson went before Congress February 26, 1917, and asked for authority "to arm our merchant vessels with defensive arms should that become necessary, and with the means of using them, and to employ any other instrumentalities or methods that may be necessary and adequate to protect our ships and our people in their legitimate and peaceful pursuits on the seas." While thus requesting express authority, the President at the same time announced that he considered himself as already possessing that authority "without special warrant of law, by the plain implication of my constitutional duties and powers." He said, however, that he preferred under the circumstances not to act upon such general implication, but wished to feel "that the authority and power

²⁹ Madison to Jefferson, Apr. 2, 1798. *Writings of James Madison*, VI, 313. Cf. *Constitution*, Art. I, Sec. 8, Cl. 10.

³⁰ William Vans Murray, minister at The Hague, wrote as follows to John Quincy Adams, June 1, 1798: "I have seen the circular, it permits arming in defence. It was all that the President could authorize, but it is war." *Report, Am. Hist. Assn. 1912*, 416.

of the Congress are behind me in whatever it may become necessary for me to do.”³¹

The bill granting the authority asked for was favored by an overwhelming majority in both houses of Congress, but was defeated by a filibuster in the Senate, the measure being opposed principally on the ground that it was a step leading to war, and therefore a delegation of the war-making power of Congress to the President. The view of this “little group of willful men” — as they were characterized by President Wilson in a public statement — was perhaps best expressed by Senator Stone (Missouri), when he said: “This bill, if enacted, would confer power upon the President to initiate war, if he should so desire or determine, and to do that supremely solemn thing without first submitting the choice of war or peace to Congress.” Regarding the President’s claim to that power without express authorization, he said: “I can not consent that this clause (i. e., the clause of the Constitution giving the President power to execute the laws) confers, or was ever intended to confer, power upon the President to determine an issue between this Nation and some other sovereignty— an issue involving questions of international law — and to authorize him to settle that law for himself, and then proceed to employ the Army and Navy to enforce his decision.”³²

In spite of the failure of Congress to grant his request for express authority, President Wilson, still convinced of his own power, and fortified not only by the known sentiments of the majority in Congress but also by the advice of his Secretary of State and Attorney General,³³ gave formal notice on March 12

³¹ *N. Y. Times Current Hist. Mag.*, VI, 48.

³² *Cong. Record*, LIV, Pt. 5 (64 Cong., 2 Sess.), 4878, 4884.

³³ *N. Y. Times Current Hist. Mag.*, VI, 55-56. An act of Mar. 3, 1819, provided that any merchant vessel of United States registry might, by armed force, oppose or defend against “any aggression, search, restraint, depredation, or seizure,” attempted by any other merchant vessel or “any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States.” This act, still in force, was held by some to forbid the action contemplated by the President, since Germany was still officially a nation “in amity with the United States.” Secretary Lansing and Attorney General Gregory advised the President, however, that the statute had been enacted with reference to protection against the pirates of that time and could not be held to apply to the pres-

of his determination "to place upon all American merchant vessels sailing through the barred areas an armed guard for the protection of the vessels and the lives of the persons on board." Accordingly, a large number of merchant vessels were equipped with six-inch guns and gunners from the United States Navy were assigned to man them, supposedly with instructions not to await an attack by a submarine, but to fire at sight, the presence of a submarine presupposing its hostile intent.³⁴

The expedient of armed neutrality so adopted by the Executive as a measure of defense merely, was later acknowledged by President Wilson himself, in his war address of April 2, to be not only "impracticable" and "ineffectual enough at best," but under the circumstances even "worse than ineffectual" and "practically certain to draw us into the war without either the rights or the effectiveness of belligerents."³⁵

In 1846, the question of the President's powers of defense was raised in an even more complicated and contentious form. The events leading up to the Mexican War involved the question of the President's power to recognize a state of war as already existing, and thereby begin defensive measures without authorization from Congress. They also illustrate to what extent hostile acts may be performed by a vigorous President in bringing about such a state of war, and how far operations may be conducted in the name of "defense."

General Taylor had been sent, after the annexation of Texas, to occupy the disputed territory beyond the Nueces River, with instructions, however, — so the President said — "to abstain from all aggressive acts toward Mexico or Mexican citizens, and ent circumstances. See the act in *Annals of Cong.*, 15 Cong., 2 Sess., II, App., 2523.

³⁴ *N. Y. Times Current Hist. Mag.* VI, 56. "Because submarines are in effect outlaws when used as the German submarines have been used against merchant shipping, it is impossible to defend ships against their attacks as the law of nations has assumed that merchantmen would defend themselves against privateers or cruisers, visible craft giving chase upon the open sea. It is common prudence in such circumstances, grim necessity, indeed, to endeavor to destroy them before they have shown their own intention. They must be dealt with upon sight, if dealt with at all." Address to Congress, Apr. 2, 1917. McKinley, *Collected Materials for the Study of the War* (1st ed.), 13.

³⁵ McKinley, *op. cit.*, 14.

to regard the relations between that Republic and the United States as peaceful unless she should declare war or commit acts of hostility indicative of a state of war."³⁶ President Polk, however, had also, in the fall of 1845, instructed Taylor that the crossing of the Del Norte by the Mexican army was to be regarded as an act of war, and in that event he should not wait to be attacked, but should attack first. Moreover, he was not only to drive the invaders back across the river, but he was vested with discretionary authority to pursue the Mexican army into Mexican territory, and to take Matamoros or any other post on that side of the river, with only the caution "not to penetrate any great distance into the interior of Mexican Territory." Likewise Commodore Conner, commanding the American squadron in the Gulf of Mexico, was instructed in a similar event to blockade all the Mexican ports on the Gulf, and to attack and take them if practicable, excepting only Yucatan and Tobasco, which had been reported as against the threatened war with the United States.³⁷

The President evidently held none of Jefferson's timid views with regard to the Executive's powers of defense. Polk expected war, he was indeed fully determined on war, but meant that the war should be "defensive" on the part of the United States. He had no intention, however, of limiting such a war of defense to merely repelling invaders. Polk did make inquiry of one of his friends in Congress (Senator Bagby of Alabama) as to the necessity or propriety of calling Congress, in the event of a declaration of war or an invasion of Texas by Mexico, and was plainly relieved when the Senator gave it as his "clear opinion" that Congress should not be called.³⁸

Having thus manipulated the situation so that actual hostilities were finally precipitated on the morning of April 25, President Polk thus summed up the situation in his message of May 11, 1846: "After reiterated menaces, Mexico has passed the boundary of the United States, has invaded our territory, and shed American blood upon the American soil. She has proclaimed that hostilities have commenced, and that the two nations are now at war. As war exists, and, notwithstanding all

³⁶ Richardson, *op. cit.*, IV, 441.

³⁷ *Diary of James K. Polk*, I, 9, 12.

³⁸ *Ibid.*, I, 13.

our efforts to avoid it, exists by the act of Mexico herself, we are called upon by every consideration of duty and patriotism to vindicate with decision the honor, the rights, and the interests of our country. . . . In further vindication of our rights and defense of our territory, I invoke the prompt action of Congress to recognize the existence of war, and to place at the disposition of the Executive the means of prosecuting the war with vigor, and thus hastening the restoration of peace."³⁹

Even before the President asked Congress thus to "recognize the existence of war," his instructions of the year before had been carried out, two battles had been fought,⁴⁰ and the war was already being carried on — without any declaration or authorization by Congress. In Congress, in fact, the President's statement that "war exists by act of Mexico," and his consequent assumption that the war would be a "defensive" one, were not accepted without dispute. Senator Benton, for example, was willing to vote men and money for defense of American territory, but was not prepared to make aggressive war on Mexico. He left it to be inferred that he did not think the territory of the United States extended west of the Nueces River, and therefore he had not approved Taylor's occupation of the region.⁴¹

Mr. Morehead (of Kentucky) denied that war could exist without some prior action on the part of Congress. "If war does now exist," he said, "— if the people of the United States now find themselves in a state of war with Mexico, it is a war which has not been brought about or declared by the legislative department of the United States, to which constitutionally the power of declaring war belongs. The President of the United States has no constitutional power to involve the nation in war. But if war does exist at this time between the United States and Mexico, it may follow that the President of the United States may involve the country in war without the assent of the legis-

³⁹ Richardson, *op. cit.*, IV, 442, 443.

⁴⁰ Palo Alto and Resaca de la Palma, on May 8 and 9, respectively.

⁴¹ *Diary of James K. Polk*, I, 390. Benton also suggested that a peaceable adjustment might be had, referring to the proclamation of the President *ad interim* of Mexico denying his own right to declare war but leaving it to the consideration of the Mexican Congress. See Benton's *Abridgment of the Debates of Congress*, XV, 499.

lative department of the Government.”⁴² Mr. Archer (of Virginia) likewise declared that the intervention of Congress was absolutely indispensable to constitute war, that the existence of hostilities on one of the frontiers of the United States did not necessarily put us in a state of war with a foreign power; that the President’s statement could not alone be accepted as indicating a state of war, since an investigation might show the state of things on the Rio Grande to be misunderstood and the Mexican authorities to have acted justifiably; that if the President’s statement were to be accepted as a legal and constitutional acceptance of a state of war, then the officers and men on the Rio Grande might involve the country in war at their pleasure.⁴³

The most vigorous assailant of the President’s declaration was Calhoun, who insisted that “in the sense of the Constitution war could be declared only by Congress,” that only through its authority could the state of things called “war” be announced to the country and the world. “War must be made,” he said, “by the sovereign authority, which in this case, were the Mexican Congress, on the one side, and the American Congress, on the other. The President of Mexico could not make war. It could be done only by the two countries. Even if the two Presidents had declared war, the nations could disavow the act.” He declared it was “monstrous” that he should be asked to affirm “that a local rencontre, not authorized by the act of either Government, constituted a state of war between the Government of Mexico and the Government of the United States — to say that, by a certain military movement of General Taylor and General Arista, every citizen of the United States was made the enemy of every man in Mexico. . . . It stripped Congress of the power of making war; and, what was more and worse, it gave that power to every officer, nay, to every subaltern commanding a corporal’s guard.”⁴⁴

The President was, of course, not lacking in supporters, among them General Cass, who took direct issue with Calhoun. “There can be no hostilities undertaken by a government,” he said, “which do not constitute a state of war. War is a fact, created by an effort made by one nation to injure another. One

⁴² Benton’s *Debates*, XV, 489, 492.

⁴³ *Ibid.*, 489, 490.

⁴⁴ *Ibid.*, 491, 497, 500.

party may make a war, though it requires two parties to make a peace." While admitting that Congress alone has a right to declare war, and that "no authority but Congress can commence an aggressive war," yet he asserted that another country "can commence a war against us without the co-operation of Congress," that it can, "at its pleasure, terminate the relations of peace with us, and substitute for these the relations of war, with their legitimate consequences. War may be commenced with or without a previous declaration. It may be commenced by a manifesto announcing the fact to the world, or by hostile attacks by land or sea." Whether or not the disputed territory rightfully belonged to the United States or to Mexico made no difference, in the opinion of Cass. The ultimate claim to the country was a matter for diplomatic adjustment, but the United States was meanwhile in possession, and any attempt to dislodge her forces was an act of aggression and an act of war. Hence he argued that the war became for the United States one of defense.⁴⁵

Under the stress of the patriotic feelings aroused by the shedding of American blood, and under the plea that the war was strictly one of defense, Congress sustained the President, recognized a state of war as already existing by act of Mexico, and authorized the carrying on of hostilities.⁴⁶ The House of Representatives, about two years later, passed a resolution "that the war was unnecessarily and unconstitutionally begun by the President of the United States."⁴⁷

Lincoln's proclamation of blockade of the Southern ports in April, 1861, again raised the question of the President's power to recognize the existence of a state of war without a declaration by Congress. The situation was all the more peculiar, in that this was not a foreign war, but an insurrection, and therefore a blockade of the Southern ports was really a blockade of the nation's own ports, something unknown to international law. Nevertheless, the Supreme Court, in the decision of the Prize

⁴⁵ Benton's *Debates*, XV, 503, 504.

⁴⁶ Act of May 13, 1846. 9 *Stat. at L.*, 9.

⁴⁷ See amendment of Mr. Ashmun to resolution of thanks to Gen. Taylor, adopted Jan. 3, 1848. On Feb. 14, 1848, the House tabled a motion to expunge this amendment from the Journal. *Cong. Globe*, 30 Cong., 1 Sess., 95, 343-344.

Cases already referred to, sustained the validity of the President's action, and asserted his right to recognize a state of war as already existing, and to take measures of defense in advance of Congressional authority. "A civil war is never solemnly declared," said the Court, "it becomes such by its accidents — the number, power, and organization of the persons who originate and carry it on. . . . As a civil war is never publicly proclaimed *eo nomine* against insurgents, its actual existence is a fact in our domestic history which the Court is bound to notice and to know. The true test of its existence . . . may be thus summarily stated: When the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the Courts of Justice cannot be kept open, civil war exists and hostilities may be prosecuted on the same footing as if those opposing the Government were foreign enemies invading the land." The Court held that the question of fact as to when an insurrection has reached such alarming proportions as to be called a war and the insurgents to be accorded the character of belligerents, is a question to be decided by the President in his capacity as Commander-in-Chief. The Court would be governed by the decisions and acts of the political department to which the power was entrusted. "The proclamation of blockade," said the Court, "is itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure under the circumstances peculiar to the case."⁴³ The Court thus in effect held that, while the existence of a state of war was necessary to the validity of a blockade, the fact that a blockade had been proclaimed was proof that a state of war existed; and the President having authority to proclaim the blockade, was thereby empowered to declare the existence of a war, and bind the Court and the country to his declaration.

Four justices, including Chief-Justice Taney, dissented vigorously from this opinion. They argued that, altho Congress had conferred upon the President authority to meet sudden emergencies — to repel invasions and suppress insurrections — that authority did not invest him with the war power. If so, they maintained, then we are in a state of war every time a military force is called out, "for the nature of the power can-

⁴³ *Prize Cases*, 2 Black, 635, 666, 667, 670 (1862).

not depend upon the numbers called out." "The Acts of 1795 and 1807," they said, "did not, and could not under the Constitution, confer on the President the power of declaring war against a State of this Union, or of deciding that war existed. . . This great power is reserved to the legislative department by the express words of the Constitution, and cannot be delegated or surrendered to the Executive." The minority held, therefore, that if the insurrection were to be placed on the footing of a war, within the meaning of the Constitution, and be accorded belligerent rights under international law, it must be recognized or declared as a war by the war making power of the Government, that is, by Congress. "There is no difference in this respect," said the justices, "between a civil and a public war."⁴⁹

Such an eminent authority as Professor Willoughby is inclined to agree with the minority rather than with the majority of the Court. He says that while all nations have the power and right, in case of a civil contest in another State, to determine whether the struggle is to be treated as a war and the contestants as belligerents, yet the State concerned is not bound by such action and may continue to treat the insurgents as rebels. Therefore, he says, "it would seem that, in the United States, from the constitutional viewpoint, it should lie with the war-declaring power, that is, with Congress, to determine when the civil struggle should be recognized as a war."⁵⁰

Whether or not we agree with Professor Willoughby and the minority of the Court as presenting the most logical argument from a strictly constitutional standpoint, the decision of the majority stands as law in the United States, as it also represents the more practical point of view. The Constitution, made as it was by practical men who had just emerged from a long, hard struggle of defense, must be construed as giving the power to take measures for defense as quickly as those measures may be needed. While the decision of the Court in this case upheld particularly the President's power to recognize an insurrection as a "state of war" and undertake the necessary defensive measures in that case without authority from Congress, the principle has also been held to apply to foreign wars as well. "In fact," says one authority, "according to the terms of the judicial de-

⁴⁹ *Prize Cases*, 2 Black, 688-689, 690-693.

⁵⁰ Willoughby, *Constitutional Law*, II, 797.

cision just cited, a President who conducts affairs with a foreign power, so as skillfully to lead it to attack the United States, can always engage the action of the country and inaugurate defensive war. In a word, his remaining on the defensive is all that is required to authorize him to act."⁵¹

It has been noted how the power of defense has been assumed and asserted by the Executive, in varying degree, as a necessary and inherent function of his office. The law and practise are thus in accord as to the nature and location of the power. With regard to the extent to which the President may constitutionally exercise this power of defense, Professor Corwin draws an analogy between this Presidential power and the right of a state under international law to self-preservation, and concludes that while the power is theoretically reserved for "grave and sudden emergencies," in practise it is limited only by the "powers of Congress and public opinion."⁵²

⁵¹ Chambrun, *The Executive Power*, 121-122. Cf. McClain, *Constitutional Law in the United States*, 190; Schouler, *Constitutional Studies*, 139; Ogg & Beard, *National Governments and the World War*, 102; *Senate Document No. 56*, 54 Cong., 2 Sess., 5.

⁵² *The President's Control of Foreign Relations*, 156.

CHAPTER V

POWERS WITH REGARD TO A DECLARATION OF WAR

The Constitution gives to Congress the power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."¹ Those functions were not granted to Congress as a matter of course, but only after much serious thought and discussion. The Congress under the Confederation had the "sole and exclusive right and power of determining on peace and war;"² but the decision in the Convention of 1787 to create separate and distinct departments of government in pursuance of Montesquieu's theory of the separation of powers, opened up anew the whole matter of the proper functioning of each department, including the question of the proper depository for the war-making functions.

Hamilton had suggested, in his plan presented quite early in the course of the Convention,³ that the power of declaring war should be vested exclusively in the Senate,⁴ but the report of the Committee of Detail gave to the Legislature as a whole the power "to make war."⁵ When this clause came up for consideration on August 17, it became a subject for warm debate. Mr. Pinkney opposed vesting the power in the Legislature, whose proceedings he said were too slow; the House of Representatives he thought too numerous a body for such deliberations; and hence he agreed with Hamilton that the Senate was the best depository.⁶ Mr. Butler thought the objections against the Leg-

¹ Art. I, Sec. 8, Cl. 11.

² *Articles of Confederation*, Art IX, in Macdonald's *Documentary Source-Book of American History*, 199.

³ June 18.

⁴ *Madison's Journal* (Hunt ed.), I, 163.

⁵ *Ibid.*, II, 82.

⁶ Pinkney had earlier in the Convention (June 1) expressed his fear of extending the "powers of peace and war" to the Executive, which he said

islature would operate in great degree also against the Senate, and favored vesting the power in the President, "who will have all the requisite qualities and will not make war but when the nation will support it." Mr. Sherman, on the other hand, thought the Executive should not be able to commence war; and Mr. Gerry "never expected to hear in a republic a motion to empower the Executive alone to declare war." Mr. Mason likewise thought the Executive was not safely to be trusted with the war power, nor was the Senate in his opinion so constructed as to be entitled to it. "He was for clogging rather than facilitating war; but for facilitating peace." As a final conclusion, the word "declare" was substituted for the word "make," and the power "to declare war" was entrusted to the Legislative body.⁷

It seemed evident to the makers of the Constitution that a power involving such tremendous consequences must in a representative government rest with the body most directly representative of the people. To vest the power of declaring war in the Executive savored too much of monarchy and of old-world institutions. Few have disputed the wisdom of that theory, few would do so today. Nevertheless, such an intense American as John Quincy Adams, spoke in 1817 of the provision which confers upon the legislative the power of declaring war as "that error in the Constitution" and a piece of "clumsy political machinery." He thought that, in the theory of government according to Montesquieu and Rousseau, the power of declaring war is "strictly an Executive act."⁸

It is believed that a brief examination will show, that tho the power to begin war through a formal declaration is clearly and definitely granted to Congress, the President is by no means excluded from all share in such declaration. A declaration of war is a simple legislative act, going through the same procedure as any other legislative measure, and requiring no extraordinary majority for its passage.⁹ The President has therefore

would render the Executive a "monarchy of the worst kind, to wit, an elective one." *Madison's Journal* (Hunt ed.), II, 49.

⁷ For the debate on this entire proposition, see *Ibid.*, II, 187-189; Far-
rand's *Records of the Federal Convention*, II, 318-320.

⁸ *Memoirs of John Quincy Adams*, IV, 32; but cf. XII, 51.

⁹ It is rather curious to note that Jefferson was for a time under the

all the rights and powers in connection with a declaration of war that he has with regard to matters of ordinary legislation. Judge Baldwin¹⁰ remarks that there may be said to be three stages in a declaration of war: (1) Doings of the President in informing Congress of the state of relations with the Power against which war may be declared; (2) doings of Congress in making the declaration; and (3) approval of the declaration by the President.

In the first place, then, the President, under the constitutional provision requiring that he "shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient,"¹¹ is empowered to recommend a declaration of war, first communicating to Congress the facts and circumstances that in his opinion call for such declaration. The President, through this power of giving information to Congress and of recommending measures to be taken, may largely influence that body in determining upon war or peace. He may withhold certain information, the disclosure of which would vitally affect the action of Congress. He may, if he is desirous of war, reveal only such information as will tend to inflame congressional opinion, or he may select a moment for his disclosures and recommendations when opinion is excited and ready to hear the worst.

Thus Jefferson charged that President Adams "kept out of sight in his speech" (of May 16, 1797)¹² Spanish protests and demands, and "thereby left it to be imagined that France is the only power of whom we are in danger;" that the Executive had war in contemplation, with the expectation that the legislature "might catch the flame;" that the convocation of Congress¹³

impression that a two-thirds majority was required to pass a declaration of war. He later admitted his error on this point. *Writings of Thomas Jefferson*, VII, 220, 222, 243-244. The New York ratifying convention of 1788 proposed an amendment requiring a two-thirds majority of each house to declare war, and a similar amendment was proposed by the Hartford Convention in 1814, neither of which received any serious consideration. See *The Federalist* (Ford ed.), Appendix, 643, 689.

¹⁰ S. E. Baldwin, "The Share of the President in a Declaration of War," *Am. Jour. Int. Law*, XII, 1-14.

¹¹ Art. II, Sec. 3.

¹² Richardson, *Messages and Papers of the Presidents*, I, 233-239.

¹³ Congress had been summoned to meet in special session May 15, 1797.

was in fact only "an experiment on the temper of the Nation, to see if it was in unison."¹⁴ Both Jefferson and Madison charged that the X Y Z correspondence was laid before Congress for the particular purpose of arousing the war temper of that body and of the country. In his message of March 19, 1798,¹⁵ the President, without revealing the content of the famous despatches, spoke pessimistically about the accomplishments of the mission to France, urged the adoption of defensive measures, and announced the action he himself proposed to take. Referring to this message, Madison wrote: "The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care, vested the question of war in the Legislature. But the Doctrines lately advanced¹⁶ strike at the root of all these provisions and will deposit the peace of the Country in that Department which the Constitution distrusts as most ready without cause to renounce it. For if the opinion of the President,¹⁷ not the facts and proofs themselves, are to sway the judgment of Congress in declaring war, . . . it is evident that the people are cheated out of the best ingredients in their Government, the safeguards of peace which is the greatest of their blessings."¹⁸

Madison was equally vigorous in referring to the actual revelation of the famous papers. "It is easy to foresee," he wrote, "the zeal and plausibility with which this part of the despatches will be inculcated, not only for the general purpose of enforcing the war measures of the Executive, but for the particu-

¹⁴ *Writings of Thomas Jefferson*, VII, 126, 138-139, 146, 148-149.

¹⁵ Richardson, *op. cit.*, I, 264-265.

¹⁶ Madison evidently refers here to the proposed measures of defense, especially the announcement of Adams that armed merchantmen of the United States would now be permitted to sail, whereas before the collectors had instructions to hold such vessels in port. See Richardson, *op. cit.*, I, 265; also *supra*, 67-68.

¹⁷ Adams had expressed his opinion, formed from an examination of the correspondence, that the objects of the mission to France could not be accomplished "on terms compatible with the safety, the honor, or the essential interests of the nation," and that the nation should prepare for defense. Richardson, *op. cit.*, I, 264. It should be remembered that the correspondence had not yet been laid before Congress.

¹⁸ *Writings of James Madison*, VI, 312-313.

lar purpose of diverting the public attention from the more important part, which shows the speech and conduct of the President to be now the great obstacle to accommodation. . . . The readiness with which the papers were communicated and the quarter proposing the call for them,¹⁹ would be entitled to praise if a mass of other circumstances did not force a belief that the view in both was more to inflame than to inform the public mind."²⁰

A study of the debates in Congress shows that Jefferson and Madison were not alone in their contention that the President was manipulating the situation and molding Congress to war. Mr. Livingston suggested that since Congress had been practically called upon to decide between peace and war, it was entitled to see the whole correspondence. "The right to judge what it was proper to publish in consideration of the public safety and interest, should not be transferred to the President, as he might withhold such parts of the papers as might prevent a correct judgment being formed upon them."²¹ Mr. Gallatin had opposed the call for the papers and favored going ahead at once to determine on peace or war, since, as he said, "if it had first been determined to call for further information, how did he know that it would be given, or, if given, whether it would be in a mutilated state, rather than which he would choose to act without it upon the Message of the President alone. . . . It was true, when the concessions were made known, it was possible that he might differ in opinion from the President as to their reasonableness; but this House has no control over the President in this respect. Therefore, the information which he has given to the House is sufficient for them; and they ought now to say whether they will go to war or remain in peace."²² Many members expressed their belief that the President's message was tantamount to a declaration of war against France.²³

¹⁹ The X Y Z correspondence was submitted to Congress April 3, 1798, in response to a resolution of the House calling for the same, passed April 2. See *Annals of Cong.*, 5 Cong., II, 1370, 1371.

²⁰ *Writings of James Madison*, VI, 316; cf. *Writings of Thomas Jefferson*, VII, 235-236.

²¹ *Annals of Cong.*, 5 Cong., II, 1359.

²² *Ibid.*, 1363.

²³ See, for example, the remarks of Giles and Gallatin. *Annals of Cong.*, 5 Cong., II, 1323, 1364.

In fact, the messages and actions of the President were considered as so inflammatory of the war passions, that Mr. Sprigg of Maryland, in order to counteract that effect, proposed a resolution "that it is not expedient for the United States to resort to war against the Republic of France."²⁴ Such a negative resolution was very unusual, and its propriety was strongly questioned, both in Congress and out.²⁵ Madison admitted that it was "in ordinary cases . . . certainly ineligible," but he thought that cases might obviously arise for which it was proper: "1. Where nothing less than a declaration of pacific intentions from the department entrusted with the power of war, will quiet the apprehensions of the constituent body, or remove an uncertainty which subjects one part of them to the speculating arts of another; 2. where it may be a necessary antidote to the hostile measures or language of the Executive Department . . .; 3. where public measures or appearances may mislead another nation into distrust of the real object of them, the error ought to be corrected; and in our Government where the question of peace or war lies with Congress, a satisfactory explanation cannot issue from any other Department."²⁶ Madison and a large number in Congress were convinced that an obvious case had arisen, that the President was deliberately trying to lead Congress into a declaration of war.

Whatever the truth in these charges against Adams, the above-mentioned resolution failed of passage, and it is clear that when the crisis was at its height in 1798, the President had brought matters to a point where "both Houses were safely committed to any policy of vigor which he would recommend."²⁷ The sentiment of Congress was perhaps best expressed by Mr. Otis when he said that "the President having declared his opinion that there is no hope of success from that mission, he wished for nothing further to convince him of the propriety of going into the different defensive measures proposed."²⁸ Under the President's leadership, therefore, acts of hostility were authorized,²⁹

²⁴ *Annals of Cong.*, 5 Cong., II, 1319.

²⁵ See the debate on the resolution. *Ibid.*, 1319-1357.

²⁶ *Writings of James Madison*, VI, 317-318.

²⁷ Bassett, *The Federalist System*, 237.

²⁸ *Annals of Cong.*, 5 Cong., II, 1370.

²⁹ Acts of May 28 and July 9, 1798. *Ibid.*, 5 Cong., III, App., 3733, 3754.

and for more than two years a "limited or imperfect war" was carried on.³⁰ Even so, peace was undoubtedly "the first object of the nation," as Jefferson had grudgingly acknowledged,³¹ no formal declaration was asked for or made, and Adams is generally credited with having "probably saved the country from war and from internal dissensions."³² Certainly there was not a moment during his entire administration when Adams, by a word, might not have secured from Congress a declaration of war. He refrained from speaking the word, and a disastrous war was avoided.

President Jefferson was also able to prevent a declaration of war during his administration, tho under somewhat different circumstances. The long series of incidents arising from the strained relations with Great Britain had culminated on June 22, 1807, in the attack of the *Leopard* upon the *Chesapeake*. The country was aroused as it had not been since the battle of Lexington.³³ "Never," says an eminent historian, "had a more just cause for war been given to any people. Never had a people called more loudly for war."³⁴

Jefferson believed that it was strictly within the province of Congress to determine whether the outrage was a proper cause of war, and that the Executive should be careful not to perform any act that would commit Congress to a particular course. He might therefore have summoned Congress at once to meet in special session to consider the extraordinary situation that had arisen. Jefferson and his Cabinet knew, however, that were Congress to meet while the excitement was at its height, it would be difficult to prevent an immediate declaration of war, or at least some action that would hopelessly embarrass the negotiations about to begin at London. He hoped that a delay would bring cooler counsels and some chance for adjustment, that, "having taught so many useful lessons to Europe, we may . . . add that of showing them that there are peaceable means of repressing injustice, by making it to the interest of the aggressor to do

³⁰ *Bas v. Tinny*, 4 Dall., 37 (1800); *Gray v. United States*, 21 Ct. of Cl., 340 (1886), in *Scott's Cases on International Law*, 452.

³¹ *Writings*, VII, 149.

³² Bassett, *op. cit.*, 251; cf. also Bascom, *Growth of Nationality*, 26.

³³ *Writings of Thomas Jefferson*, IX, 105.

³⁴ McMaster, *History of the People of the United States*, III, 262.

what is just, and abstain from future wrong."³⁵ He therefore issued a proclamation setting forth the grievances of the United States and declaring the ports closed to the armed ships of England;³⁶ but, under the pretence that Washington was too sickly a place for Congress to come to in the summer, its date for assembling was fixed at October 26.³⁷

The delay proved useful. The British government sent a minister to adjust the Chesapeake affair, recalled the Admiral who gave the order for the attack, and disavowed his act.³⁸ Thus Jefferson, if he did not succeed in finally averting a war with Great Britain, at least, by refusing to summon Congress at the moment of excitement, delayed the war for several years.

President Madison aroused the war passion of Congress in 1812 by submitting to it the "Henry correspondence," which aimed to show that Great Britain was attempting to sever the New England states from the Union.³⁹ The British Government denied any connection with the Henry mission; no evidence was produced to show that the New England states had contemplated any plan of secession; and the Federalists charged that the entire affair had been trumped up by Madison in order to augment the feeling for war, evidence being produced to show that the President had paid \$50,000 for the papers.⁴⁰ Madison, however, was slow in taking advantage of the war passion he had thus aroused. Congress, now thoroly in favor of war, fumed and fretted at the delay, but hesitated to act without a recommendation from the President. Finally, a delegation from Congress, headed by Clay, waited upon the President and declared the readiness of the majority in Congress to vote the war, if recommended.⁴¹

³⁵ *Writings*, IX, 87-88.

³⁶ Richardson, *op. cit.*, I, 422.

³⁷ *Ibid.*, 424.

³⁸ McMaster, *op. cit.*, III, 263, 269-270.

³⁹ For the Henry correspondence, see *Annals of Cong.*, 12 Cong., I, 1162-1181; for Madison's message, Richardson, *op. cit.*, I, 498.

⁴⁰ Updyke, *Diplomacy of the War of 1812*, 126-127.

⁴¹ *Writings of James Madison*, VIII, 192, n; Joseph Gale's account in *Am. Hist. Rev.*, XIII, 309; cf. also accounts in Hildreth, *History of the United States*, VI, 298; VonHolst, *Constitutional and Political History of the United States*, I, 230; McMaster, *op. cit.*, III, 448 — all to the effect that Madison was promised a renomination if he would send Congress a war message.

Thereupon Madison sent a special message June 1, 1812, recommending war,⁴² to which Congress responded by passing the declaration on June 18.

The significance of this is not so much in the apparent domination of the President by the majority element in Congress, as in the fact that Congress, even tho fully convinced of the necessity for war and fully determined upon such action, yet found itself unwilling to act without first securing the recommendation of the President. Had the President been less hasty in passing judgment upon, and submitting to Congress, the Henry correspondence, the authenticity of which had at least not been thoroly established; had he delayed his war message a little longer, the new conciliatory attitude of the British Government might have been met and the war of 1812 very likely altogether averted. These are the facts that John Adams probably had in mind when he wrote in 1815: "Mr. Madison's administration has proved great points, long disputed in Europe and America.

1. He has proved that an administration under our present Constitution can declare war.

2. That it can make peace. . . ."⁴³

President Polk came into office in 1845 with the avowed purpose of acquiring California and, later, also New Mexico. He tried first to secure them peacefully by purchase, and for that purpose sought an appropriation of a million dollars from Congress, concealing the real object under the euphemistic phrases of "effecting an adjustment of our differences with Mexico," and "the conclusion of a Treaty of boundary."⁴⁴ Failing in this, Polk, as early as February, 1846, declared himself in favor of "strong measures" against Mexico, and from that time was steadily determined on war.⁴⁵ The sending of a war message was postponed, however, partly because of the unsettled state of the negotiations with Great Britain over the Oregon question, but probably rather because Polk was seeking something that might serve as a plausible cause for war.

⁴² *Writings*, VIII, 192-200; Richardson, *op. cit.*, I, 499-505.

⁴³ *Life and Works of John Adams*, X, 167-168.

⁴⁴ McMaster, *op. cit.*, VII, 432, 439; Reeves, *American Diplomacy under Tyler and Polk*, 272; *Diary of James K. Polk*, I, 34-35, 303, 306-308, 310-313, 317.

⁴⁵ Reeves, *op. cit.*, 284, 287, 288, 294; Rhodes, *Historical Essays*, 211; *Diary of James K. Polk*, I, 233-234, 319, 337, 343.

Certain sundry claims of American citizens upon Mexico had been a matter of difficulty and negotiation between the two governments since 1836,⁴⁶ and were still largely unsettled. The President now hit upon these claims as the "aggravated wrongs" which should be the basis for the complaints against Mexico,⁴⁷ altho "many of the claims were exorbitant and some of them fraudulent."⁴⁸ Meanwhile, General Taylor had been sent to occupy the disputed territory beyond the Nueces River, had advanced to a position opposite Matamoras where a strong Mexican force was located, and Polk seemed to think there was some hope of a collision in the near future,⁴⁹ which would give him more satisfactory ground for his war message.

For some time, however, no hostilities occurred, the President became impatient of delay, and on May 9 the Cabinet agreed that a message recommending war should be prepared and submitted by the following Tuesday (May 12), whether the Mexican forces had committed any act of hostility against Taylor or not. Buchanan, the Secretary of State, had already drawn up a statement of the causes of complaint, the President had decided to substitute practically the precise language he himself had used in dealing with the Mexican claims in his annual message of the year before, when suddenly the situation was changed by the receipt of news that same evening from Taylor that the Mexicans had attacked and hostilities had begun. The Cabinet was immediately summoned again, and it was agreed that a message should be sent recommending "vigorous and prompt measures to enable the Executive to prosecute the war."⁵⁰

Polk's opportunity had come. He recognized that "public excitement in and out of Congress was very naturally very great;" unlike Jefferson, he determined to play upon that feeling, so he spent Sunday in writing his message, and on Monday, May 11, it was submitted to Congress. There was now no mention of the long-unsettled claims as the "aggravated wrongs" borne by the United States; the entire emphasis was laid on the fact that the Mexicans had attacked American forces and shed American blood

⁴⁶ Reeves, *op. cit.*, 76, 86, 93, 96, 107-108.

⁴⁷ *Diary of James K. Polk*, I, 363, 377, 382.

⁴⁸ Reeves, *op. cit.*, 86.

⁴⁹ *Diary of James K. Polk*, I, 380 (May 6, 1846).

⁵⁰ *Ibid.*, 384-386.

on American soil, and that since war had thus been begun by Mexico, the issue must be accepted and hostilities carried on with vigor.⁵¹

In spite of the fact that there had been, and still was, bitter opposition in Congress to a war with Mexico,⁵² the President's message was quickly responded to. In two hours, of which time one and a half hours were occupied in reading the documents accompanying the President's message, the House of Representatives passed the bill reciting that war existed by act of Mexico and providing for the support of hostilities.⁵³ The Senate could not be hurried quite so rapidly, but by evening of the next day (May 12), it had also given its sanction; and the President's actions were sustained.

Whether or not Congress would have sustained the President and authorized hostilities, had not the news from Taylor changed the situation from an admitted war of aggression to an ostensible war of defense, it is impossible to say with any degree of certainty. Certainly, as Reeves suggests, "Taylor's skirmish with the Mexicans was an occurrence that saved Polk from a dangerous situation."⁵⁴ Nevertheless, Polk had been able to so handle matters as to make an armed collision almost inevitable, and he took advantage of the excitement thus aroused to secure from an unwilling Congress a strong backing for his war policy. His actions, says Rhodes, "illustrate the power inherent in the executive office."⁵⁵ Certainly, but for the action of the President, the war would not have been sanctioned by Congress; because of the action of the President, the war was sanctioned, and the objects sought by the President were obtained.

Had President Grant been eager for war with Great Britain, a mere message and recommendation from him to that effect would undoubtedly have brought on such a conflict. The unanimous passage by the House of Representatives in 1866 of a bill modifying the neutrality laws in such a way as to permit the

⁵¹ Richardson, *op. cit.*, IV, 437-443.

⁵² A motion in the House of Representatives for a formal declaration of war was rejected by a large majority. *Cong. Globe*, 29 Cong., 1 Sess., 792, 794.

⁵³ Statement of Senator Benton. *Diary of James K. Polk*, I, 392.

⁵⁴ Reeves, *op. cit.*, 298.

⁵⁵ *Historical Essays*, 212.

sale of war-ships and munitions to other powers;⁵⁶ the sympathy and support given to the Fenian movement against Canada; the resolution proposed in the Senate in 1867 for the recognition to Abyssinia during its war with Great Britain of the same rights which Great Britain had recognized to the Confederacy;⁵⁷ the action of the Senate in 1869 in rejecting by a vote of 54-1 the treaty providing for a joint high commission to pass upon the claims of subjects of either government against the other;⁵⁸ speeches such as that of Senator Sumner delivered during the consideration of the above-mentioned treaty;⁵⁹ the angry and excited discussion in the press of the two countries — these various incidents showed that the bitter feeling aroused against Great Britain during the Civil War had assumed hostile form;⁶⁰ that, as an eminent authority has expressed it, "in the opinion of the majority, the country had just cause for war in the escape of the Alabama and the Florida."⁶¹

The President and his wise Secretary of State, Hamilton Fish, chose to disregard this sentiment of the country and of Congress for an unyielding and belligerent attitude towards Great Britain. On the other hand, the two points in the American case which had given special offense to the British were allowed to recede into the background, if not conceded altogether;⁶² negotiations were persistently carried on for the arbitration of the Alabama and Florida claims, and the peace was preserved.

President Cleveland, on the other hand, very nearly precipitated war with England, when in his special message of December 17, 1895,⁶³ he made his strong declaration with regard to the Venezuelan boundary situation. The President stated that arbi-

⁵⁶ *Cong. Globe*, 39 Cong., 1 Sess., Pt. V, 4194, 4197. See Sec. 10, which was the addition. The debate on the bill shows that it was aimed particularly at Great Britain.

⁵⁷ *Ibid.*, 40 Cong., 1 Sess., 810.

⁵⁸ *Sen. Ex. Jour.*, XVII, 163.

⁵⁹ On April 13, 1869. *Works of Charles Sumner*, XIII, 53-93.

⁶⁰ Cf. Dunning, *Reconstruction: Political and Economic*, 160-162.

⁶¹ Rhodes, *Historical Essays*, 218-219.

⁶² These were the claim that wrong had been done to the United States by the recognition of the Confederates as belligerents, and the demand for compensation for "national" or "indirect" losses. See Dunning, *op. cit.*, 167.

⁶³ Richardson, *op. cit.*, IX, 655-658.

tration had been declined by Great Britain, and proposed an independent inquiry and report by a strictly American commission. "When such report is made and accepted," he said, "it will, in my opinion, be the duty of the United States to resist by every means in its power, as a willful aggression upon its rights and interests, the appropriation by Great Britain of any lands or the exercise of any governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela."⁶⁴ Tho the country had up to this time been ignorant of the peremptory demands of the administration, and the message threatening war came therefore as an unexpected shock;⁶⁵ tho Congress and the President had heretofore quarreled over almost every question of consequence, Congress now sustained the President in his demands and passed almost without debate, the bill for the appointment of the commission asked for.⁶⁶

It is not important in this connection whether or not the President had made a valid interpretation and a correct application of the Monroe Doctrine. The important thing to notice is that he had raised an issue which meant simply this, that if arbitration were refused by Great Britain, the United States would mark the boundaries of one of her colonies and compel the mother-country to accept the limits so prescribed; that a hostile Congress had accepted without question the issue so raised; and that the President had thereby placed the United States and Great Britain unexpectedly in a position where one or the other must openly recede from its announced intention, if a conflict was to be averted. A conflict was averted, but only by reason of England's conciliatory agreement to arbitrate; and it is worthy of note that, as one authority has expressed it, "only in the case where he (Cleveland) was led, by whatever influences, to offer a gross insult to Great Britain, such as would not have been borne for a moment by this country from any other without prompt resentment, did he receive the unanimous support of both houses."⁶⁷

⁶⁴ Richardson, *op. cit.*, IX, 658.

⁶⁵ Dewey, *National Problems*, 308; Latané, *From Isolation to Leadership*, 49.

⁶⁶ *Cong. Record*, XXVIII, Pt. I (54 Cong., 1 Sess.), 234-235, 255-265; Dewey, *op. cit.*, 310.

⁶⁷ Bradford, *The Lesson of Popular Government*, I, 358, n. Other au-

In the case of the difficulties with Spain over the Cuban question, it has been said that "Presidents Cleveland and McKinley kept the national legislature from a declaration of hostilities for more than two years before final action was taken."⁶⁸ It is true that the temper of Congress was for war long before the President was ready to recommend such a step; it is likewise undoubtedly true that the President might have delayed such recommendation still longer, and possibly — almost certainly — have averted war altogether.

Congress in 1890 had, by concurrent resolution, requested the President "to invite from time to time, as fit occasions may arise, negotiations with any government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two governments which cannot be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means."⁶⁹ In the spring of 1898 Spain had made several concessions, which, according to eminent authority, "fully covered" the expressed wishes of the United States for Cuba.⁷⁰ and on March 31, she proposed arbitration of the Maine controversy.⁷¹ General Woodford, the American minister to Spain, evidently did not consider the situation hopeless, for he wrote: "I know that the Queen and her present ministry sincerely desire peace and that the Spanish people desire peace, and if you can still give me time and liberty of action I will get for you the peace you desire so much and for which you have labored so hard;"⁷² and on April 10, in a personal appeal to the President: "I hope that nothing will now be done to humiliate Spain, as I am satisfied that the present Government is going, and is loyally ready to go, as fast and as far as it can."⁷³

thorities say that President Cleveland, in this instance, recommended "demands Great Britain could hardly regard as anything but unfriendly." Ogg & Beard, *National Governments and the World War*, 102.

⁶⁸ Young, *The New American Government and Its Work*, 27.

⁶⁹ *Yale Rev.*, IX, 402.

⁷⁰ For these concessions of March 30, March 31, and April 9, see *For. Rel.* 1898, 725, 762, 750; cf. also Benton, *International Law and Diplomacy of the Spanish American War*, 83-91.

⁷¹ Benton, *op. cit.*, 85.

⁷² *For. Rel.* 1898, 732.

⁷³ *Ibid.*, 747.

But neither the above-mentioned resolution of Congress, the overtures of Spain, the proffered mediation of the Powers,⁷⁴ nor the pleading of the American minister, had any effect on the President. No reply was made to the offer of arbitration,⁷⁵ and on April 11, the message recommending war went to Congress, with the usual and natural response. The vital question, says Benton, is "whether the President did not yield prematurely and whether he had exhausted the resources of diplomacy;"⁷⁶ he answers that question by saying that in the opinion of nearly all writers on international law the particular form of intervention in 1898 was "unfortunate, irregular, precipitate, and unjust to Spain."⁷⁷

The influence of President Wilson with regard to the events of the recent world war, and the readiness of Congress to follow his recommendations—to be a "peace Congress" when the President desired peace, to be a "war Congress" when the President recommended war—are too evident to require any extended comment. Altho basing his claim for re-election in 1916 largely on the ground that he had "kept us out of war," with the presumption that he would continue to do so in the future, and carrying with him a Congress presumably committed to the same policy; and altho standing, as late as January, 1917, for "peace without victory,"⁷⁸ President Wilson felt compelled by the turn of events to recommend war upon Germany in his address of April 2, a recommendation at once adopted by the "peace Congress" with very little opposition.⁷⁹

Altho the governments allied with Germany could with difficulty be distinguished in method and policy from the government of Germany—the Austro-Hungarian government especially having openly avowed its endorsement of Germany's submarine policy, and its ambassador having been implicated in plots to des-

⁷⁴ On April 6, the Ambassadors of Great Britain, Germany, Austria, France, Italy, and Russia, united in a personal appeal to President McKinley for a peaceful adjustment. Two days later, even stronger representations were made at Madrid. Benton, *op. cit.*, 89-90.

⁷⁵ President McKinley, in his message to Congress, dismissed this offer of arbitration with these laconic words: "I made no reply."

⁷⁶ Benton, *op. cit.*, 95.

⁷⁷ *Ibid.*, 108.

⁷⁸ See his address to the Senate, Jan. 22, 1917. McKinley, *Collected Materials for the Study of the War* (1st ed.), 9-11.

⁷⁹ Joint Resolution of Apr. 6, 1917. *Ibid.*, 137.

troy our factories —, the President was not at that time ready to make war upon any of them, because, as he said, "they have not made war upon us or challenged us to defend our right and our honor."⁸⁰ Congress therefore took no action towards declaring war against these countries.

However, by December of the same year, President Wilson had discovered that "one very embarrassing obstacle that stands in our way is that we are at war with Germany, but not with her allies." He therefore recommended a declaration of a state of war with Austria-Hungary, that nation being "not her own mistress, but simply the vassal of the German Government." The President admitted that the same logic would seem to demand a declaration of war also against Turkey and Bulgaria, since "they also are the tools of Germany," but he declined to recommend such action against these countries, because "they are mere tools, and do not yet stand in the direct path of our necessary action."⁸¹ In each case Congress followed the recommendation of the President without question, declaring war upon Austria-Hungary,⁸² and, despite some feeling that Turkey and Bulgaria should have been included,⁸³ no declaration was ever made against those countries.⁸⁴

These examples and incidents from the history of our own country illustrate clearly the very important position conceded to the President with regard to a declaration of war. They would seem to bear out the statement of one of our congressmen, when he said in a recent speech: "History shows . . . that while Congress does possess that power (to declare war), in reality, the President exercises it. Congress has always declared war when the President desired war, and Congress has never attempted to declare war unless the President wanted war. That was true of the war of 1812. It was true of the Mexican war. It was true of the Spanish-American war. It was true of this war. It will

⁸⁰ Address to Congress, Apr. 2, 1917. McKinley, *op. cit.*, 15.

⁸¹ Address to Congress, Dec. 4, 1917. *N. Y. Times Current Hist. Mag.*, VII, 66-67 (Jan., 1918). For further reasons why Turkey and Bulgaria were omitted, see *ibid.*, 74.

⁸² Joint Resolution of Dec. 7, 1917. *Ibid.*, 69.

⁸³ Cf. attitude of Senator Lodge. *Ibid.*, 75.

⁸⁴ Diplomatic relations were broken off with Turkey, Apr. 20, 1917, but the initiative had been taken by that country; with Bulgaria relations were not even severed during the entire course of the war.

probably be true of every war in which the nation engages so long as the present method of declaring war continues."⁸⁵

The power of the President to recommend war and to communicate facts as a basis for such recommendation gives him also an opportunity to set forth the grounds and to explain the purposes of the nation in entering upon war. Since the ratification of the Hague Convention of 1907, such a statement of reasons is required before the beginning of hostilities. These are the terms of the article in question: "The Contracting Parties recognize that hostilities between them must not commence without a previous and unequivocal warning, which shall take the form either of a declaration of war, giving reasons, or of an ultimatum with a conditional declaration of war."⁸⁶ It would seem, from the language of the article, that the body in any country to which is entrusted the power of declaring the war was considered the proper body to specify the reasons for such declaration.

As a matter of fact, the uniform practise in the United States has been otherwise. Even before the adoption of the Hague Convention, the President, in his messages to Congress recommending war, has always stated what seemed to him to be the reasonable grounds for such action. There is no doubt that Congress, under its power to pass the declaration, might likewise have expressed its reasons,⁸⁷ which might agree with those of the President, or might differ, either wholly or in part. The President

⁸⁵ Congressman Dill. *Cong. Record*, 65 Cong., 3 Sess. (Jan. 21, 1919), 1824; see also an editorial in *The Nation*, Mar. 1, 1919; cf. Finley & Sanderson, *The American Executive and Executive Methods*, 280; Bryce, *American Commonwealth*, I, 54; Bradford, *The Lesson of Popular Government*, I, 359; Case, *Constitutional History of the United States*, 232-233; Young, *The New American Government and Its Work*, 27; Schooner, *Constitutional Studies*, 138.

⁸⁶ Convention relative to the Commencement of Hostilities, Art. 1. Higgins, *The Hague Peace Conferences*, 198.

⁸⁷ "It may be said. . . that this power (of declaring war) naturally includes the right of judging whether the nation is or is not under obligations to make war. . . However true this position may be, it will not follow that the executive is in any case excluded from a similar right of judgment, in the execution of its own functions." *Works of Alexander Hamilton*, IV, 142. "The power to judge of the causes of war, as involved in the power to declare war, is expressly vested, where all other legislative powers are vested, that is, in the congress of the United States." *Writings of James Madison*, VI, 154; cf. *ibid.*, 153, 161.

would be bound to accept or reject the declaration as passed by Congress, as a whole.⁸⁸ He could not accept the conclusion and disapprove of the grounds given for the action. Congress has, however, contented itself with a mere formal declaration of war or a formal recognition of a state of war as already existing, without adding any specific statement of reasons or objects. Long reports have been made in every case by the Foreign Relations committees of each house, justifying the action about to be taken, but in no case has the statement of reasons embodied in these reports been incorporated into the declaration itself, not even since the adoption of the Hague Convention. Congress, in thus refusing or neglecting to give a specific statement of its own, has apparently recognized the President as having the right and as being the most suitable authority to set forth to the world the grievances of the nation. At all events, the President, rather than Congress, is now regarded, both at home and abroad, as the spokesman of the nation with regard to the reasons and objects of a war, and his statements have been generally accepted as committing the nation to the policies therein laid down.

The power of the President with regard to a declaration of war does not end with the functions of communication of information, and of recommendation. A declaration of war, like any other bill, order, resolution, or vote requiring the concurrence of both houses of Congress, must be submitted to the President for his approval or disapproval.⁸⁹ If it were possible to imagine Congress as passing a declaration of war without first being certain of the President's approval, or in direct opposition to his known views (as is often done with other measures), the President could exercise his power of veto and thus prevent the declaration from going into effect. Theoretically, Congress might in turn, by a two-thirds majority, declare war even against the wishes of the President.⁹⁰ Strictly speaking, it is true, as an eminent senator has said, that "the President not only cannot declare war, and it is not only conferred in terms upon Congress,

⁸⁸ S. E. Baldwin, *op. cit.*, *Am. Jour. Int. Law*, XII, 10.

⁸⁹ *Constitution*, Art. I, Sec. 7, Cl. 2, 3. The declarations in the cases of the War of 1812, the Mexican War and the Spanish-American War were passed in the form of Acts of Congress; those against Germany and Austria-Hungary in the form of joint resolutions.

⁹⁰ See Schouler, *Constitutional Studies*, 137.

but even if the President should be opposed to a proposed war, two-thirds of each Branch can declare war. It would not require his approval. There is the most important of all foreign relations. It does not belong to the President."⁹¹ In practise, however, such a situation cannot be imagined. The successful prosecution of a war would be impossible without the hearty coöperation of that department of the government which has in its sphere the actual direction and management of the war. Consequently, tho Congress technically has the power, it has chosen to follow rather than to lead with respect to a declaration of war. It always has sought, and it is safe to assume that it always will seek, to assure itself of the President's approval before passing or even proposing a declaration of war.⁹²

After the enactment and approval of a declaration of war, it becomes the right and duty of the President to give public notice of it to all neutral powers.⁹³ The Hague Convention of 1907 requires such notice to neutrals, without specifying by whom it is to be given.⁹⁴ The President, however, as the sole organ of communication with foreign powers, is the natural authority for the exercise of that function, and there has been no dispute as to his right or duty in that respect. The exercise of the function is of considerable importance, since by the article referred to a state of war is to be regarded as of no effect towards neutrals until they have received such notification,⁹⁵ and hence a delay or neglect in fulfilling the requirement of the Convention might af-

⁹¹ Senator Bacon. *Cong. Record*, XL, Pt. 3 (59 Cong., 1 Sess.), 2132.

⁹² "Certain it is that the war with France was begun that way, Congress following the lead of, and seeking knowledge from, the President at every step." *Sen. Doc. No. 56*, 54 Cong., 2 Sess., 17. A recent newspaper dispatch with regard to the Mexican situation is significant as illustrating the absolute subserviency of even a hostile Congress in such matters: "President Wilson is in complete control of the direction of American policy in dealing with Mexico. . . . If President Wilson should indicate that Congress should adopt the Fall resolution requesting a severance of diplomatic relations with Mexico and withdrawal of recognition of Carranza, there would be little opposition to the passage of the measure. If, however, he should oppose such a step, the resolution will be modified to conform to his views or shelved." *Chicago Tribune (Staff Correspondence)*, Dec. 8, 1919.

⁹³ S. E. Baldwin, *op. cit.*, *Am. Jour. Int. Law*, XII, 11.

⁹⁴ Convention relative to the Commencement of Hostilities, Art. 2. Higgins, *op. cit.*, 199.

⁹⁵ *Ibid.*

fect the validity of captures at sea and other warlike operations involving neutral rights. The chief ends of such announcement to neutrals are, therefore, to give formal notice of the fact of the declaration and the time of its going into effect.

In addition to notifying neutrals, the President usually also gives official notice of the existence of a state of war to the citizens of this country. This he does by means of a public proclamation. Presidents Madison and Polk both issued such proclamations, merely announcing to the country that war existed by act of Congress and exhorting the people to exert themselves "in preserving order, in promoting concord, in maintaining the authority and the efficacy of the laws, and in supporting and invigorating all the measures which may be adopted by the constituted authorities for obtaining a speedy, a just, and an honorable peace."⁹⁶

There does not appear to be any express constitutional or statutory authority for the issuance of such proclamations, tho if any were needed, it might be implied from the power to "take care that the laws be faithfully executed."⁹⁷ It may also be inferred from an act passed in 1798. This act provided, among other things, for the removal of enemy aliens "whenever there is declared a state of war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President makes public proclamation of the event." It further authorized the President, "in any such event, by his proclamation thereof, or other public act," to establish the necessary regulations for the conduct, restraint, residence, or removal of such aliens.⁹⁸ President Wilson, in his proclamation of April 6, 1917, announcing the state of war with Germany,⁹⁹ referred specifically to this section of the Revised Statutes for his authority, tho he was probably referring rather to the authorization to proclaim alien enemy regulations than to the mere announcement of a state of war. President McKinley issued several proc-

⁹⁶ Richardson, *op. cit.*, I, 512; IV, 470.

⁹⁷ *Constitution*, Art. II, Sec. 3.

⁹⁸ Act of July 6, 1798. *Annals of Cong.*, 5 Cong., III, App., 3753. See also *U. S. Rev. Stats.*, sec. 4067.

⁹⁹ Text in McKinley, *Collected Materials for the Study of the War*, 169.

lamations after the declaration of war against Spain, but none announcing the existence of a state of war. It was probably thought unnecessary since the war had already been going on for several days before the retroactive declaration was adopted.¹⁰⁰ The President can hardly be said to be under any obligation to issue such a proclamation, since the passage of the declaration should be sufficient notice to the country of the existence of a state of war. He has generally deemed it wise to do so, however, and there can be no question of his power in that respect, even without express authority. The statute mentioned may be said to confer the authority by implication, and, indeed seems to expect from the President that action.

¹⁰⁰ The joint resolution authorizing the President to use the armed forces in compelling Spain's withdrawal from Cuba was passed April 20, hostile measures were taken at once, and the formal declaration, passed April 25, declared the war to have existed since the 21st.

II. Military Powers in Time of War

CHAPTER VI

POWER TO RAISE AND ORGANIZE THE ARMED FORCES

It has come to be an axiom in public law that the power to raise and support the armed forces of a democratic state should be confided exclusively to the popular branch of the government.¹ The Constitution of the United States accordingly gives to Congress the power "to raise and support armies," and "to provide and maintain a navy."² Raising armies includes such matters as the determination of the number of men to be enlisted; their enlistment qualifications; their organization into the different arms of the service; the number and arrangement of the various units; the number and rank of officers; the term of service for officers and men. Providing a navy includes the determination of the same class of subjects relating to the seamen and naval officers; the number, size, character, and cost of vessels of war, navy and dock yards, and other similar matters.³

Over all these matters the power of Congress is complete and exclusive. The President is vested with no constitutional power in regard to the raising and organization of the armed forces. He derives none from his position before international law. Hence such powers as he does possess in this respect must rest wholly upon the authority of custom and statute. Congress in this field is supreme, but Congress has from the first recognized the wisdom and necessity of entrusting the President with some statutory authority, which has at times amounted to the exercise of a considerable discretionary power.

The common method of raising armies under ordinary circumstances — that of voluntary enlistment — has generally been ex-

¹ Pomeroy, *Constitutional Law* (Bennett's ed.), 382.

² Art. I, Sec. 8, Cl. 12, 13.

³ Pomeroy, *op. cit.*, 383.

exercised in peace time in accordance with detailed statutes, leaving to the President little or no real power. Congress is ordinarily careful to prescribe definitely the number of men to be enlisted, their enlistment qualifications, the term of their service, and other details, merely authorizing the President "to accept," "to call for," "to call for and accept," or "to employ," within these well-defined limits. Occasionally the statutes have prescribed only the maximum number of men to be raised, giving to the President some little discretion in determining upon the size of the forces within that number. Likewise when providing for the navy, the statutes generally prescribe in detail the number and kind of ships to be constructed, contracted for, or purchased, the cost and details of equipment and armament, and other corresponding matters, leaving to the President only the duty to see that the provisions of the statutes are carried out.

In times of war or emergency, however, and occasionally even in peace time, the President has been vested with more or less discretion in these matters. Thus the foundation of the army under the Constitution had scarcely been laid,⁴ when by the Act of March 3, 1791, which added another regiment to the regular forces, the President was given power, "if of opinion that it will be conducive to the public service," to employ "levies" (volunteers) in addition to the number of 2000, for six months, as a supplementary force, obviously to be used only for emergency purposes.⁵ An act of the next year (March 5, 1792), passed as a result of St. Clair's defeat by the Indians, provided three additional regiments for the protection of the frontier to be enlisted for three years, but gave the President the power "to forbear to raise, or to discharge after they shall be raised," the whole or any part of these forces, "in case events shall, in his judgment render his so doing consistent with the public safety." The President was further authorized to call into service "for such period as he may deem requisite, such number of cavalry as, in his judgment, may be necessary for the protection of the frontiers;" and

* By the Act of Sept. 29, 1789, the army existing under the Confederation was "recognized to be the establishment for the troops in the service of the United States;" and by the Act of Apr. 30, 1790, the beginning was made of a permanent military establishment. *Annals of Cong.*, 1 Cong., II, App., 2199, 2222.

⁵ *Ibid.*, 2350.

also to employ "such number of Indians as he may think proper . . . in case he shall deem the measure expedient."⁶

The crisis with France resulted also in the granting of considerable discretionary power to the President. The Act of May 28, 1798, authorized the President to raise a Provisional Army of 10,000 men, "in the event of a declaration of war against the United States, or of actual invasion of their territory by a foreign Power, or of our imminent danger of such invasion, discovered, in his opinion, to exist, before the next session of Congress;" and also to create a sort of reserve force by accepting, "if in his opinion the public service shall require," volunteers liable to service at any time within two years.⁷ Other acts during the same period likewise vested the President with some discretionary power, such as to prescribe the enlistment qualifications for the forces provided and to discharge the troops at his discretion.⁸

The Acts of February 24, 1807 and February 6, 1812, passed in anticipation of trouble with England, each again provided a sort of reserve force, of 30,000 and 50,000 men, respectively, to be liable for duty at any time the President might deem proper, within two years from the date of their acceptance into the service;⁹ while another act passed during the war (Act of January 29, 1813) authorized the raising of such a force "as in the opinion of the President may be necessary for the public service," up to twenty additional regiments.¹⁰

During the Mexican War very little real discretionary authority was granted to the President in the matter of raising the necessary forces, altho the Act of May 13, 1846, recognizing a state of war, empowered him to employ the militia, naval, and military forces, and "to call for and accept" up to 50,000 volunteers; while another act of the same date authorized him to increase the companies in the regular army to 100, to be reduced again to 64 when the exigency should cease.¹¹

⁶ *Annals of Cong.*, 2 Cong., App., 1343 (Secs. 11, 13, 14).

⁷ *Ibid.*, 5 Cong., III, App., 3729 (Secs. 1, 3). It was under authority of this act that Washington was appointed Lieutenant-General and Commander-in-Chief of the forces to be raised for the expected war with France.

⁸ Acts of July 16, 1798 and Mar. 2, 1799. *Ibid.*, 3785, 3933.

⁹ *Ibid.*, 9 Cong., 2 Sess., App., 1259; *ibid.*, 12 Cong., II, App., 2235.

¹⁰ *Ibid.*, 12 Cong., 2 Sess., App., 1322-1325.

¹¹ 9 *Stat. at L.*, 9, 11.

The earliest acts for the raising of volunteers and for the increase of the regular army during the Civil War were similar in character, the President being authorized to accept volunteers, "in such numbers as the exigencies of the public service may, in his opinion, demand," up to 500,000 for three years or the duration of the war; and to increase the regular army by 11 regiments, such increase to be only for the period of the emergency.¹² The Act of July 17, 1862, however, vested the President with somewhat larger powers, in that, besides authorizing him to accept an additional 100,000 volunteers for nine months, it empowered him to accept volunteers as replacements, "in such numbers as may be presented for that purpose;" and also to employ persons of African descent, without limit as to number, for any labor, or military or naval service, for which they might be found competent.¹³ Considerable power was also given with regard to increasing the navy by an act which authorized the Secretary of the Navy to hire, purchase, or contract for such vessels "as may be necessary."¹⁴

The most sweeping grant of power with regard to the raising of forces by voluntary enlistment came during the Spanish-American War, when no limit was placed on the numbers the President might call for in that way. Both the Joint Resolution of April 20, presenting the ultimatum to Spain, and the Act of April 25, formally declaring war, empowered the President, in identical language, "to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions [and this Act] into effect."¹⁵ The Act of April 22, 1898, authorizing the Volunteer Army, apparently contemplated some legal limit, as it provided that when necessary to raise a volunteer army, "the President shall issue his proclamation stating the number of men desired, within such limits as may be fixed by law."¹⁶ With the exception of provisions regarding special organizations,¹⁷ no lim-

¹² Acts of July 22, July 25, and July 29, 1861. 12 *Stat. at L.*, 268, 274, 279.

¹³ 12 *Stat. at L.*, 597 (Secs. 3, 4, 12).

¹⁴ Act of July 24, 1861. *Ibid.*, 272.

¹⁵ 30 *Stat. at L.*, 364, 738.

¹⁶ *Ibid.*, 361 (Sec. 5).

¹⁷ *Ibid.* (Sec. 6); see also Act of May 11, 1898. *Ibid.*, 405.

it to the number of troops to be raised was ever made. Under the provisions of this act, President McKinley issued two proclamations, one on April 23, calling for 125,000 volunteers, and the other on May 25, calling for 75,000.¹⁸

During the recent war with Germany, the principle of raising troops by voluntary enlistment was almost entirely abandoned, altho the President was at the beginning of the war empowered in that way to raise the increments of the Regular Army provided for by the National Defense Act of 1916, to recruit all Regular Army organizations to their maximum strength, and to raise and maintain at his discretion four infantry divisions.¹⁹

The considerable power has thus on many occasions been granted to the President to raise forces by the process of voluntary enlistment, the adoption of conscription has carried with it a still larger grant of power and a wider range of discretion. There is no longer any doubt as to the constitutional right of Congress to provide for the raising of armed forces by conscription as well as by voluntary enlistment,²⁰ and this method has been used, less commonly than the other, but on occasions of greater emergency.

Conscription was recommended by Congress, and used to some extent by the states during the Revolution,²¹ and was first proposed under the Constitution in 1814. Other methods having failed to bring forth the required number of troops, Secretary of

¹⁸ Richardson, *Messages and Papers of the Presidents*, X, 203-204, 205-206.

¹⁹ Selective Service Act of May 18, 1917. The authorization of the volunteer infantry divisions was in response to the offer of ex-President Roosevelt to raise this number of troops from the country at large. President Wilson declined to exercise the authority granted him under this provision.

²⁰ *Arver v. United States*, 245 U. S., 366(1918), in Wigmore, *Source-Book of Military Law and War-Time Legislation*, 617-626. The general understanding that the Constitution contemplated and permitted conscription was indicated by the following amendment proposed by the Rhode Island ratifying convention, May 29, 1790: "That no person shall be compelled to do military duty otherwise than by voluntary enlistment, except in cases of general invasion; anything in the second paragraph of the sixth article of the Constitution, or any law made under the Constitution, to the contrary notwithstanding." *Elliot's Debates*, I, 336. The arguments for and against conscription are well summed up in Pomeroy, *Constitutional Law*, 391-392.

²¹ Upton, *Military Policy of the United States*, 27-28, 29, 35-36, 42.

War Monroe, in a report submitted October 17, suggested to Congress several alternative plans of raising men by draft.²² Some sort of conscription measure would undoubtedly have been adopted, had not its necessity been obviated by the termination of the war.

The Enrollment Act of March 3, 1863, is notable as being the first instance of resort to conscription in the United States under the Constitution. This act constituted all able-bodied male citizens and declarants between the ages of 20 and 45 into the "national forces," made certain classifications, divided the country into enrollment districts, and empowered the President to assign to each district the quota of men to be furnished and to call forth these "national forces" by draft.²³ Amendments added in 1864 made it clear that the President's power to call for men by this means was to be practically unlimited, he being authorized, "whenever he shall deem it necessary, during the present war, to call for such number of men for the military service of the United States as the public exigencies may require;" and further, at his discretion, to call for volunteers for one, two, or three years, deficiencies in quotas to be filled by draft.²⁴

Under the provisions of these acts, President Lincoln issued five separate calls for men — by proclamation of October 17, 1863, a call for 300,000 volunteers for three years or the war, to serve as replacements for those whose term of service expired during the year, and any deficiencies in the quotas of any state to be made up by draft on January 5, 1864; by executive order of February 1, 1864, a draft for 500,000 for three years or the war, with deductions for men furnished under the call of October 17, and therefore in reality a call for only 200,000; by executive order of March 14, 1864, an additional draft for 200,000 to supply a force for the Navy and an adequate reserve; by proclamation of July 18, 1864, a call for 500,000 volunteers, deficiencies to be filled by draft on September 5; and by proclamation of December 19, 1864, a call for 300,000 volunteers for one, two, or three years, to supply deficiencies and to provide for casualties.²⁵

²² *Am. State Papers, Mil. Affairs*, I, 514-517.

²³ 12 *Stat. at L.*, 731.

²⁴ Acts of Feb. 24 and July 24, 1864. 13 *ibid.*, 6, 390.

²⁵ Richardson, *Messages and Papers of the Presidents*, VI, 169, 226-227, 232, 235, 271-272.

The Spanish War was fought principally with volunteers, but it has already been noted that the President was given practically unlimited power with respect to the raising of those.²⁶ The threatening situation that had been developed by the great European War led, however, to the passage in 1916 of the so-called National Defense Act,²⁷ into which was incorporated to a certain extent the principle of conscription, in that the President was empowered, among other things, to draft the National Guard and the National Guard Reserve created by that act, into the federal service, whenever Congress should authorize the use of armed forces for any purpose requiring troops in excess of the Regular Army.

This act increased considerably the President's powers to use the militia forces at his discretion, since the troops so "federalized" were by that action automatically discharged from the militia and taken over bodily into the national forces, and might therefore be used, not merely as militia, but for any purpose for which the regular military and naval forces might be used.²⁸ Under the provisions of this act, the National Guard was "federalized" and drafted by the President into the service of the United States during the Mexican border troubles of 1916, and at the beginning of the war with Germany in 1917.²⁹

Finally, the principle of conscription was adopted in the Selective Service Act of May 18, 1917,³⁰ as the one means for raising the immense number of men required in the war with Germany, and the President was vested with wide powers in connection therewith. He was authorized to draft into the service of the United States the various National Guard organizations, in accordance with the National Defense Act of 1916; to raise

²⁶ *Supra*, 104.

²⁷ Public No. 85, 64 Cong., in Wigmore, *Source-Book of Military Law and War-Time Legislation*, 384-444.

²⁸ It was under the provision of this act that the President was enabled to send the National Guard organizations overseas during the recent war, practically intact, and thus add in short order an immense number of already organized and at least partly trained men to the fighting forces.

²⁹ *N. Y. Times Current Hist. Mag.*, IV, 617; see proclamation of July 3, 1917. *U. S. Stats.*, 65 Cong., 1 Sess., Procs., 37.

³⁰ Public No. 12, 65 Cong., in Wigmore, *op. cit.*, 460-468. This act was amended at various times — Apr. 20, May 16, May 20, Aug. 31, 1918. *Ibid.*, 469-474.

immediately by draft 500,000 men in addition to the Regular Army and the National Guard; to raise and begin training, "in his discretion and at such time as he may determine," an additional 500,000; and to raise by draft such additional units "as he may deem necessary" for the maintenance of the above forces at the maximum strength.

Tho an army of nearly 2,000,000 men was thus provided for, President Wilson was not satisfied with the powers granted, and on May 2, 1918, through Secretary Baker, he requested Congress to remove all limit on the number of men that might be drafted for military service and to give him authority to summon as many as he might find necessary.³¹ Congress acceded to this request, and in the Army Appropriations Act of July 9, 1918,³² extended the authority of the President "so as to authorize him during each fiscal year to raise by draft . . . the maximum number of men which may be organized, equipped, trained, and used during each year for the prosecution of the present war until the same shall have been brought to a successful conclusion."

The President has thus from the very earliest period of our national history exercised a considerable power in connection with the raising of armed forces, a power that has been increased with the needs of the emergency, but a power based generally on definite statutory authority. It is beyond dispute that without such authority the President has no right to raise armies or provide for the navy. Nevertheless, there have been occasions when such power has been exercised without any legal sanction. Thus, during the Seminole War of 1818, the military commanders (Generals Gaines and Jackson) took the responsibility of raising and organizing a force of volunteers and Indians without statutory authority, and of formally mustering them into the service of the United States. General Jackson, on taking command, had been ordered by the War Department to call on the executives of adjoining states for such additional militia as might be required for the termination of the war, but instead he levied an army from the people of Tennessee and Kentucky by private circular letters, accepted the services of two regiments of volunteers as well as a considerable body of friendly Indians,

³¹ *N. Y. Times*, May 3, 1918.

³² Public No. 193, 65 Cong., in Wigmore, *op. cit.*, 587, 600.

organized and officered them on his own authority, and placed at their disposition United States funds under his control. Altogether he was reported to have raised an army of about 2500 men, appointed 230 officers, and established rank from an Indian brigadier-general down to the lowest subaltern of a company.³³

Jackson's action was vigorously condemned in reports by both Senate and House committees, as a violation of the Constitution and a dangerous infringement on the powers of Congress.³⁴ Jackson defended his action with equal vigor, claiming that he had been in effect charged with the management of the war and vested with the powers necessary to carry it to a "speedy and successful" termination; that the call for volunteers was absolutely necessary to avoid delay and disaster; and that "every measure touching the raising and organizing this volunteer corps was regularly communicated to the Secretary of War, and received his unqualified approbation."³⁵ The records appear to sustain Jackson's contention. Secretary of War Calhoun, in reply to Jackson's announcement of what he had done, expressed to him the "entire approbation of the President of all the measures which you have adopted to terminate the rupture with the Indians."³⁶ Responsibility for the violation of the Constitution must therefore rest finally in this instance with the Executive.

In 1845 occurred another instance of this exercise of power without statutory authority. Anticipating war with Mexico, the Adjutant General, by direction of the Secretary of War, wrote General Taylor on August 6, directing him to learn from the authorities of Texas what additional forces could, in a case of need, be placed at his disposal, and giving him authority to call them into service. "Such auxiliary volunteer force from Texas, when events, not now revealed, may justify their employment, will be organized and mustered under your orders, and be received into the service of the United States when actually required in the field to repel invasion, actual or menaced,

³³ *Am. State Papers, Mil. Affairs*, I, 740; II, 99-100.

³⁴ See report of the Senate committee, Feb. 24, 1819; of the House committee, Feb. 28, 1820. *Ibid.*, I, 739-741; II, 101.

³⁵ *Ibid.*, I, 755, 758.

³⁶ See letters of Jackson to Calhoun, Jan. 12 & Jan. 20, 1818; and of Calhoun to Jackson, Jan. 29 & Feb. 6, 1818. *Ibid.*, I, 696-697, 743-744.

and not before.”³⁷ This order to Taylor was entirely without authority of statute, tho it was expected that provision would be made to cover the case.

President Lincoln, immediately after the outbreak of the Civil War, took it upon himself to raise a great army without awaiting the sanction of Congress. By proclamation of May 3, 1861, based on no authority except the “existing exigencies” and his own position “as President and Commander-in-Chief,” he ordered the increase of the Regular Army by 22,714 officers and men and of the Navy by 18,000 seamen, and in addition called for 42,034 volunteers to serve for three years — an aggregate increase in the armed forces of 82,748 officers and men.³⁸ By the time of the special session of Congress, beginning July 4, the response to these calls had brought forth a total of 220,000 men accepted for service — besides 80,000 militia for three months — without any constitutional or statutory authority.³⁹ The President further, without statutory authority, ordered a total of 19 vessels added to the Navy, and directed the Secretary of the Treasury to advance, without security, \$2,000,000 to private individuals, to be used in meeting requisitions made necessary by these military and naval measures.⁴⁰

Rhodes characterized these acts of the President as “clearly beyond the President’s authority,”⁴¹ and Upton says of them that “No usurpation could have been more complete.”⁴² The President himself recognized and admitted that he had acted beyond his constitutional or statutory powers, but justified himself on the grounds of necessity, saying to Congress in his message of July 4, 1861: “These measures, whether strictly legal or not, were ventured upon under what appeared to be a popular demand and a public necessity, trusting then, as now, that Congress would readily ratify them. It is believed that nothing has

³⁷ House Ex. Doc. No. 60, 30 Cong., 1 Sess., 83, 84, quoted in Upton, *Military Policy of the United States*, 195-196.

³⁸ Richardson, *op. cit.*, VI, 15-16. See also Lincoln’s executive order of May 7, 1861. *Ibid.*, 18-19.

³⁹ Upton, *Military Policy of the United States*, 230.

⁴⁰ Richardson, *op. cit.*, VI, 78. The individuals were John A. Dix, George Opdyke, and Richard H. Blatchford.

⁴¹ *History of the United States*, III, 395.

⁴² *Military Policy of the United States*, 229.

been done beyond the constitutional competency of Congress.”⁴³ To this Congress responded by the Act of August 6, 1861, legalizing all the acts, proclamations, and orders of the President after March 4, 1861, respecting the Army and Navy and calling out militia and volunteers, “as if they had been issued and done under the previous and express authority and direction of the Congress of the United States.”⁴⁴

It is not within the scope of this study to speculate upon the question whether, in these instances of unauthorized exercise of power, the President was justified by the necessities in each case. It is sufficient to note that, when he considered the emergency serious enough, the President has acted, and presumably will again act, as he thinks the situation demands, and trust to Congress to grant him the proper legal sanction afterwards. If these steps appear necessary to save the government, as they were said by Lincoln to be necessary in 1861, popular opinion will undoubtedly sustain the President, as it did then.

In the matter of the organization of the armed forces, the statutes have generally been careful to provide the details, but the President has frequently been granted considerable power in this respect also, especially in time of war or public emergency. The Act of March 3, 1791, authorizing the President to employ emergency “levies” at his discretion, empowered him also “to organize the said levies,” apparently as he should see fit;⁴⁵ while the Act of March 5, 1792, prescribed in detail the organization of the enlarged army, but with the distinct proviso. “That it shall be lawful for the President of the United States to organize the five regiments of infantry and the said corps of horse and artillery as he shall judge expedient, diminishing the number of corps, or taking from one corps and adding to another, as shall appear to him proper.”⁴⁶

Under the authority of this act, President Washington, on December 27, 1792, announced to Congress that the Legionary plan of organization had been adopted for the troops, the whole force of about 5,000 men being given the name of the Legion of the

⁴³ Richardson, *op. cit.*, VI, 24. See also Lincoln’s statement in his message of May 26, 1862. *Ibid.*, 78.

⁴⁴ 12 *Stat. at L.*, 326 (Sec. 3).

⁴⁵ *Annals of Cong.*, 1 Cong., II, App., 2350 (Sec. 9).

⁴⁶ *Ibid.*, 2 Cong., App., 1343 (Sec. 2).

United States, and divided into four Sub-Legions, each with its staff and more detailed division into dragoons, artillery, infantry, and riflemen.⁴⁷ The plan so adopted continued under executive authority until 1795, when it was given definite statutory recognition, the Sub-Legions still to be organized, however, "in such manner as the President of the United States shall direct."⁴⁸

The Provisional Army provided for the expected war with France was to be organized by the President into corps of artillery, cavalry, and infantry, "as the exigencies of the service may require;"⁴⁹ the largest portion of the troops provided in view of the threatening relations with England was to be organized by him into battalions, squadrons, regiments, brigades, and divisions as expedient;⁵⁰ while the forces raised particularly for the protection of the frontier were to be armed, equipped, and organized "in such manner . . . as the nature of the service, in his opinion, may make necessary."⁵¹

The organization of the forces raised for the prosecution of the Mexican War was prescribed in considerable detail in the statutes, leaving to the President very little discretionary authority. The same was true of those authorized during the Civil War, except that the Act of July 17, 1862, empowered the President to establish and organize army corps according to his discretion.⁵² The organization of the forces raised by the proclamation of May 3, 1861, was, however, undertaken by the President without definite authority, as was the actual levying, and it was done in a most extraordinary manner, in that it was entrusted by the President to the Secretary of the Treasury instead of to the Secretary of War.⁵³ Secretary Chase was to be assisted by a

⁴⁷ *Am. State Papers, Mil. Affairs*, I, 40-41.

⁴⁸ Act of Mar. 3, 1795. *Annals of Cong.*, 3 Cong., App., 1515 (Sec. 3).

⁴⁹ Act of May 28, 1798. *Ibid.*, 5 Cong., III, App., 3729 (Sec. 2).

⁵⁰ Acts of Feb. 24, 1807 and Feb. 6, 1812. *Ibid.*, 9 Cong., 2 Sess., App., 1259 (Sec. 3); 12 Cong., II, App., 2235 (Sec. 3).

⁵¹ Act of Jan. 2, 1812. *Ibid.*, 12 Cong., II, App., 228 (Sec. 1).

⁵² 12 Stat. at L., 597 (Sec. 9). For an example of how President Lincoln organized the army of the Potomac under this provision see his General War Order No. 2, Mar. 8, 1862. *Works of Abraham Lincoln* (Federal ed.), V, 443-444.

⁵³ "The Secretary of War is the regular constitutional organ of the President for the administration of the military establishment of the nation." *United States v. Eliason*, 16 Pet., 291, 302 (1842).

board of three army officers (Colonel Thomas, the Adjutant General, Major McDowell, the Assistant Adjutant General, and Captain Franklin, of the Topographical Engineers), who were free to make propositions, altho their acceptance or rejection rested wholly with the Secretary of the Treasury. The scheme of organization agreed upon by this board and accepted by Secretary Chase was adopted by the War Department and published to the army in General Orders,⁵⁴ later being incorporated by Congress into statute.⁵⁵

For the Spanish War, the Act of April 22, 1898, altho prescribing rather fully the organization of the volunteers into brigades and divisions, again authorized the President to organize the army corps.⁵⁶ In the National Defense Act of 1916, the organization was likewise carefully prescribed up to and including brigades and divisions, but the President was empowered, "in time of actual or threatened hostilities, or when in his opinion the interests of the public service demand it," to organize the forces into "such army corps or armies as may be necessary," with the further provision that "nothing herein contained . . . shall prevent the President from increasing or decreasing the number of organizations prescribed for the typical brigades, divisions, and army corps, or from prescribing new and different organizations and personnel as the efficiency of the service may require."⁵⁷

This blanket authority was continued in almost identical language in the Selective Service Act of 1917,⁵⁸ and made it possible for the President, upon the advice of the General Staff, so to adjust the organization of the army and to add such new units as the character of the war showed to be necessary. It was under this authority, for example, that all distinctive appellations as Regular Army, National Guard, and National Army, were dis-

⁵⁴ Nos. 15 and 16, May 4, 1861. See also Special Order No. 218, A. G. O., Sept. 2, 1862, by which President Lincoln ordered all the clerks and employees of the departments in Washington to be organized into companies and supplied with arms and ammunition, "for the defense of the capital." Richardson, *op. cit.*, VI, 122.

⁵⁵ See Upton, *Military Policy of the United States*, 233-235; Acts of July 22, 25 and 29, 1861. 12 *Stat. at L.*, 268, 274, 279.

⁵⁶ 30 *Stat. at L.*, 362 (Sec. 9).

⁵⁷ Sec. 3. Wigmore, *op. cit.*, 385.

⁵⁸ Sec. 1. *Ibid.*, 461.

continued, and all the land forces merged into one United States Army.⁵⁹ It was likewise under this authority that such an organization as the Students' Army Training Corps was added to the military forces;⁶⁰ that new services were added, such as the Motor Transport Corps, Chemical Warfare Service, Air Service, and Tank Corps; and that the new plan of organization for the army, as recently announced by General March, was put into effect without any further action on the part of Congress.⁶¹

⁵⁹ See Summary of Annual Report of Adjutant General of the Army, in *Official U. S. Bulletin*, Jan. 8, 1919. The Selective Service Act provided that the National Guard organizations drafted into the federal service should retain their State designations, "as far as practicable."

⁶⁰ See *Official U. S. Bulletin*, Oct. 1, 1918.

⁶¹ *Ibid.*, Mar. 29, 1919. The new Navy reorganization — that of maintaining two separate major fleets instead of only one — was likewise announced as going into effect June 30, 1919. *N. Y. Times Current Hist. Mag.*, X, 253 (Aug., 1919).

CHAPTER VII

POWERS OF COMMAND

The Constitution makes the President the Commander-in-Chief of the army and navy of the United States and of the state militia when called into the actual service of the United States.¹ Under this provision the President is vested with a function than which, according to a well known writer, there is none "more significant as indicating his independent and exalted position."²

Strangely enough, in spite of this extraordinary grant of power, this clause of the Constitution appears to have aroused very little discussion and scarcely any serious opposition in the Convention of 1787. Some objections were evidently made, but rather to the idea of the President's assuming active command in the field than to his exercise of the general powers of command.³ The members of the Convention probably had not forgotten the trouble and embarrassment caused during the Revolution by congressional interference and the lack of a centralized control over the army. They were very likely influenced also by the precedents in the practise of European states, in former plans of union for the colonies, and in the recently established state constitutions. As students of political theory they were also undoubtedly impressed with the notion that the inherent nature of the executive office made it the proper repository for the chief command of the military and naval forces.⁴

¹ Art. II, Sec. 2, Cl. 1.

² McClain, *Constitutional Law in the United States*, 210.

³ See Luther Martin's letter to the Maryland legislature. *Elliot's Debates*, I, 378; Farrand's *Records*, III, 217-218.

⁴ This idea was expressed quite recently by Senator Bacon as follows: "I want to give my idea as to why the constitution vests in the President the office of commander-in-chief. The President is an Executive. Upon him devolves the execution of the law and the enforcement of the law; and the enforcement of the law must necessarily be, in its last analysis, through

There was more discussion and more opposition in the state ratifying conventions. Thus Mr. Miller, in the North Carolina convention, expressed himself as fearful that the influence of the President, particularly over the military, would be too great, that he was given extensive powers too easily liable of abuse. "He considered it as a defect in the Constitution, that it was not expressly provided that Congress should have the direction of the motions of the army."⁵ On the whole, however, the propriety of such a power in the President, so far as to give orders and exercise a general supervision over military and naval movements, was not seriously questioned even in the state conventions, the opposition again being largely to the possibility of the President's assumption of personal command of the forces.⁶

The general feeling throughout the country was undoubtedly expressed by Hamilton when he wrote: "The propriety of this provision is so evident in itself, and so consonant to the precedents of the State constitutions in general, that little need be said to explain or enforce it. Even those of them which have, in other respects, coupled the chief magistrate with a council, have for the most part concentrated the military authority in him alone. Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength forms a usual and essential part in the definition of executive authority."⁷

Altho there has been some contention that Congress, by virtue of its power to declare war and to provide for the support of the armed forces, is a superior body, and that the President, as Commander-in-Chief, is "but the Executive arm, . . . in every detail and particular, subject to the commands of the lawmaking the military arm. Of course the President can not be the Supreme Executive unless he has the supreme command of that through which the execution of the law must be enforced." *Cong. Record*, XLIII, Pt. 3 (60 Cong., 2 Sess.), 2542-2543.

⁵ *Elliot's Debates*, IV, 114.

⁶ Story, *Commentaries on the Constitution*, II 315; cf. remarks of Patrick Henry. *Elliot's Debates*, III, 58-60.

⁷ *The Federalist*, No. 73 (74), (Goldwin Smith ed., p. 409); cf. also reply of Mr. Spaight to Mr. Miller. *Elliot's Debates*, IV, 114-115.

power,"⁸ practically all authorities agree that the President, as Commander-in-Chief, occupies an entirely independent position, having powers that are exclusively his, subject to no restriction or control by either the legislative or judicial departments.⁹

The line of demarcation between the war powers of the President and those of Congress is not clearly drawn in the Constitution,¹⁰ nor are the President's powers as Commander-in-Chief specifically described or defined by that instrument. Hence authorities in general hold that the President as Commander-in-Chief may constitutionally do what any military commander may do in accordance with the usual practise of carrying on war among civilized nations; that he must be guided in the exercise of such power wholly by his own judgment and discretion, subject to his general responsibility under the Constitution.¹¹ According to the Supreme Court, the extent of these powers must be determined "by their nature and by the principles of our institutions."¹² For a closer definition we must therefore look to the law and usage of the military service, to international law and custom, and to the general practise under the Constitution and statutes of the United States.¹³

From these sources we find that the first great power of the President as Commander-in-Chief of the armed forces in time of war is the general direction of the military and naval operations.

⁸ Senator Bacon in U. S. Senate, Feb. 6, 1906. *Cong. Record*, XL, Pt. 3 (59 Cong., 1 Sess.), 2135. On a later occasion, Senator Spooner replied very aptly to a similar suggestion, that such a construction would mean that "the Constitution did not constitute the President Commander-in-Chief of the Army and Navy, but constituted him the Adjutant-General of the Congress." *Cong. Record*, XLI, Pt. 2 (59 Cong., 2 Sess.), 1131.

⁹ Pomeroy, *Constitutional Law* (Bennett's ed.), 71; Davis, *Treatise on the Military Law of the United States*, 323; *Mississippi v. Johnson*, 4 Wall., 475, 497 (1869); Ogg & Beard, *National Governments and the World War*, 100-101; Secretary Seward in letter to Lord Lyons, 1861, quoted in Watson, *On the Constitution*, II, 917; J. W. Garner, in *Revue de Droit Public et de la Science Politique*, XXXV, 10.

¹⁰ It was attempted by the Supreme Court in *Ex parte Milligan*, 4 Wall., 2, 139 (1866); see *supra*, 19.

¹¹ Finley & Sanderson, *The American Executive and Executive Methods*, 267; Whiting, *War Powers under the Constitution*, 82-83.

¹² *Ex parte Milligan*, 4 Wall., 2, 139-140 (1866).

¹³ Cf. J. W. Garner, in *Revue de Droit Public et de la Science Politique*, XXXV, 13 (Jan-Mar., 1918).

It is the President who wages war. Congress declares war and provides the means for carrying it on, but the President decides how the war is to be conducted and directs the campaigns. This is "a despotic power," says Burgess,¹⁴ but nevertheless must be confided by a sound political science to the President. "The President must have despotic power when he wages war. The safety, the life perhaps, of the state requires it." Other authorities also hold that in the field of military operations there are no limitations prescribed by the Constitution and the President's power is therefore exclusive. Thus Lieber says that the direction of military movement "belongs to command, and neither the power of Congress to raise and support armies, nor the power to make rules for the government and regulation of the land and naval forces, nor the power to declare war, gives it the command of the army. Here the constitutional power of the President as commander-in-chief is exclusive."¹⁵

It is an interesting question whether the President, under this exclusive power, may assume active, personal command of the army and navy, in time of war. Authorities do not all agree on this point. Some claim that the President is essentially a civil officer and that it is not intended that he shall take active command in time of hostilities;¹⁶ others say outright that the President "has all the powers of personal command;"¹⁷ while still others express themselves as doubtful. Thus Watson thinks it by no means certain that the President has such power, since if he should undertake to command the military and naval forces in time of war, he would necessarily be prevented from executing other important duties required of him by the Constitution. Watson admits, however, that if the President insisted on assuming personal command of the forces, it would be difficult and probably impossible to restrain him.¹⁸

While the expediency of such action on the part of the President may be doubted, there does not seem to be any ground for

¹⁴ *Political Science and Comparative Constitutional Law*, II, 261.

¹⁵ Lieber, *Remarks on Army Regulations*, 18; see also Watson, *On the Constitution*, II, 913-914; Von Holst, *Constitutional Law of the United States*, 194.

¹⁶ McClain, *Constitutional Law*, 210.

¹⁷ Finley & Sanderson, *op. cit.*, 267.

¹⁸ Watson, *On the Constitution*, II, 919; cf. Miller, *On the Constitution*, 163; Von Holst, *Constitutional Law of the United States*, 197.

questioning his power. The matter was specifically raised, discussed and determined in the Constitutional Convention of 1787. Thus the New Jersey plan presented by Mr. Paterson on June 15 authorized the Executive to direct all military operations, "provided that none of the persons composing the federal Executive shall on any occasion take command of any troops, so as personally to conduct any enterprise as General or in any other capacity."¹⁹ Hamilton's plan likewise vested the chief command and direction of war in the Executive, but with the proviso that "he shall not take the actual command, in the field, of an army, without the consent of the Senate and Assembly."²⁰

The action of the Convention in refusing to adopt any of these specific proposals,²¹ and the further attempts in the state ratifying conventions to secure amendments expressly forbidding such exercise of command by the President,²² certainly make it clear that the framers of the Constitution understood and intended that the President should have the right. Hamilton but reflected the general interpretation of the Constitution when he referred to the President in this connection as the "first general and admiral of the Confederacy."²³

While there is therefore no doubt as to the constitutional right of the President to assume personal command of the armed forces

¹⁹ *Elliot's Debates*, I, 176.

²⁰ *Ibid.*, V, 587.

²¹ See Luther Martin's letter to the Maryland legislature: "Objections were made to that part of the article, by which the President is appointed Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, and it was wished to be so far restrained, that he should not command in person; but this could not be obtained." *Ibid.*, I, 378; Farrand's *Records*, III, 217-218.

²² Thus the New York convention proposed an amendment, "That the President or person exercising his powers for the time being, shall not command an army in the field in person, without the previous desire of Congress;" while in the Maryland convention a similar amendment was submitted, but negatived in committee and never reported. *Elliot's Debates*, I, 330; II, 553. In the 1st Congress Mr. Tucker (S. C.) proposed an amendment striking out the words "be Commander-in-Chief" from the article defining the President's powers and substituting the phrase "have power to direct (agreeably to law) the operations." This was probably in line with the New York amendment; but on a vote to refer to the Committee of the Whole, it was negatived. *Annals of Cong.*, I, 762, 763.

²³ *The Federalist*, No. 68 (Goldwin Smith ed., p. 381).

at his discretion, the sound construction of the constitutional provision is that no such action on his part was contemplated unless in an extraordinary emergency; that the power of personal command was vested in the President principally for the purpose of giving him that control over military and naval operations which is a necessary attribute of the executive branch of the government.²⁴

No President has yet seen fit to exercise his right to take personal command of the forces in time of war, altho Washington on one occasion during his administration did actually take the field in command of militia forces called out to suppress an insurrection.²⁵ President Polk also took a keen personal interest in the military movements of the Mexican War, and at one time, in order to carry his point against a refractory Adjutant-General, insisted on his right as Commander-in-Chief to have his instructions regarded as a military order to be promptly obeyed.²⁶ President Lincoln, while never exercising actual personal command, frequently visited his generals in the field, advised with them, drew up plans of campaign, and issued among others his famous General War Order No. 1 (January 27, 1862), and Special War Order No. 1 (January 31, 1862), the former ordering a general movement of the land and naval forces to be begun against the insurgents on February 22, the latter ordering an expedition against Manassas Junction.²⁷

Presidents McKinley and Wilson seem to have left the active direction of military movements entirely to the military and naval commanders, altho with the modern means of communication the President might, much more easily than before, assume

²⁴ Cf. opinion of Secretary of War Monroe, given to a committee of Congress, Feb. 11, 1815. *Am. State Papers, Mil. Affairs*, I, 606; see also Story, *Commentaries on the Constitution*, II, 315; *Elliot's Debates*, II, 366.

²⁵ *Infra*, 135.

²⁶ *Diary of James K. Polk*, III, 31.

²⁷ *Works of Abraham Lincoln* (Federal ed.), V, 423, 425; Rhodes, *History of the United States*, III, 581. But cf. Lincoln's letter to Gen. Grant, Apr. 30, 1864: "Not expecting to see you before the spring campaign opens, I wish to express, in this way, my entire satisfaction with what you have done up to this time, so far as I understand it. The particulars of your plans I neither know nor seek to know." McPherson, *History of the Rebellion*, 425.

active charge of military and naval operations.²⁸ Modern war has, however, also added such a heavy burden of civil duties upon the President as to make it practically impossible for him to devote any time to the purely military side, and it is not likely that any President will ever in the future attempt to exercise his right of personal command.

As a necessary part of his power to direct the military and naval operations, the President in time of war has entire control of the movements of the army and navy. Congress has, under the Constitution, the sole power to raise and support armies and to provide and maintain a navy;²⁹ but after the forces have been provided and war has been begun, the President may order them anywhere he will for the purpose of carrying on the war to a successful conclusion.

An eminent authority thinks that Congress could probably by law forbid the troops being sent out of the jurisdiction of the United States in time of peace;³⁰ but in time of war the authority of the President is recognized as being absolute as to where the war is to be conducted, whether to await the onslaughts of the enemy and wage a purely defensive war within the boundaries of the United States, or to send the armed forces of the United States out of the country to carry on an offensive war in the enemy territory, in the territory of an ally, or perhaps even in the territory of a neutral. "The power to use an army," says a distinguished ex-Justice of the Supreme Court, "is co-extensive with the power to make war; and the army may be used wherever war is carried on, here or elsewhere. There is no limitation upon the authority of Congress to create an army and it is for the President as Commander-in-Chief to direct the campaigns of that army wherever he may think they should be carried on."³¹

As a matter of fact, there never has been any serious doubt as to the President's constitutional power to order the regular

²⁸ See description of how President McKinley kept in touch with the military operations during the Spanish war. Beard, *Readings in American Politics and Government*, 316.

²⁹ Art. I, Sec. 2, Cl. 12, 13.

³⁰ Root, *Colonial and Military Policy of the United States*, 157.

³¹ Charles E. Hughes, "War Powers under the Constitution," in *Central Law Jour.*, LXXXV, 206-214 (Sept. 21, 1917). See also *Fleming v. Page*, 9 How., 603, 615 (1849).

forces wherever he may think best in the conduct of a war, whether within or without the limits of the United States, nor has any President hesitated to make use of that power in any foreign war in which the United States has been engaged. Regular troops were by order of the President sent to Canada in the War of 1812,³² to Mexico in 1846, to Cuba, Porto Rico, and the Philippines during the war with Spain, and to France, Italy, and Russia during the recent war with Germany.³³

Just as the President decides when and where troops shall be employed in time of war, so he alone likewise determines how the forces shall be used, for what purposes,³⁴ the manner and extent of their participation in campaigns, and the time of their withdrawal. Thus the troops ordered to France during the recent war were sent for the general purpose of waging active war against the German military forces and of bringing about their defeat; were with that end in view instructed to coöperate with the Allies even to the extent of being intermingled on occasion with Allied troops and placed under the command of superior

³² The act of Feb. 6, 1812, authorized the President to accept 50,000 volunteers to do duty whenever he deemed proper, which President Madison said was passed "with a view to enable the Executive to step at once into Canada." *Writings of James Madison*, VIII, 176.

³³ The constitutionality of the President's action in sending troops to France was upheld by Federal Judge Speer in a case decided Aug. 20, 1917. See also address by ex-Senator Root at Chicago, Sept. 14, 1917, in *The War, Russian and Political Addresses*, 68.

For an opposite view, see a somewhat bombastic open letter to the Secretary of War by Hannis Taylor, in which he says: "The unauthorized transportation by the executive power of our conscripted National Militia to the battlefields of Europe, in defiance of Section 8, Article I, of the Constitution, will stand out in the time to come as the most stupendous act of illegality in all our history." *Cong. Record*, 65 Cong., 3 Sess. (Jan. 20, 1919), 1728-1729.

A House resolution (H. J. Res. 166) was introduced July 29, 1919, proposing an amendment to forbid Congress to conscript armies to serve outside the United States to execute orders of any international body or tribunal. *Ibid.*, 66 Cong., 1 Sess., 3561.

³⁴ "The policy to be followed by our troops in any country is one to be determined by the Executive." Statement of Maj. Gen. Graves in message to his troops in Russia, quoted in *The Nation*, CVIII, 853 (May 31, 1919). *The Nation* comments as follows: "So much for Wilsonian *Realpolitik* by comparison with the old-fashioned theory that it is the business of Congress to declare war."

Allied officers; and were withdrawn from foreign soil as rapidly as possible after that purpose had been accomplished.

The Siberian expedition, while of course intended to aid in a general way in bringing about the defeat of the Central Powers, had the more limited and particular purposes of saving the Czecho-Slovak armies in Russia from destruction, and of steady-ing the efforts of the Russians at self-defense and the establishment of law and order. It was not withdrawn upon the defeat of the Central Powers and the conclusion of the armistice, but was continued for some time in order "that we, with the concurrence of the great allied powers, may keep open a necessary artery of trade and extend to the vast population of Siberia the economic aid essential to it in peace time, but indispensable under the conditions which have followed the prolonged and exhausting participation by Russia in the war against the Central Powers." To that end, Major General Graves, in command of the American troops in Siberia, was instructed "not to interfere in Russian affairs, but to support Mr. Stevens" (the American director of the Russian Railway Service Corps) in keeping open the Siberian railway.³⁵ In contradiction to this policy of continuing the American troops in Siberia, the small contingent sent to Murmansk and Archangel in Russia proper was entirely withdrawn by July 1, 1919.³⁶ The action in every case was determined solely by authority of the President, acting under his power as Commander-in-Chief of the army and navy.

There has been considerable bitter criticism in Congress of the President's Russian or Siberian policy; there has also been some question as to his power to send and continue troops there, especially since the signing of the armistice and the virtual ending of the war; and there have been some attempts to assert for Con-

³⁵ See statement of President Wilson, July 22, 1919, in response to a Senate resolution of inquiry. *Cong. Record*, 66 Cong., 1 Sess. (Sept. 3, 1919), 5075. The President's statement is also printed as Senate Document No. 607. See also statement of the Acting Secretary of State regarding the purposes of the Siberian expedition. *Official Bulletin*, Aug. 5, 1918. Secretary of War Baker announced on Jan. 13, 1920, that the President had authorized the withdrawal of the American forces from Siberia, and that the movement of troops would begin at once.

³⁶ See statement of Gen. March, Chief of Staff, June 16, 1919. *Hearings before the Subcommittee of the Committee on Military Affairs, U. S. Senate*, 66 Cong., 1 Sess., 50.

gress the right to control the movements of the forces and to compel their withdrawal. Senator Borah (Idaho) in a recent speech declared the presence of American troops in Siberia an unlawful usurpation of power by the President and demanded their immediate withdrawal. "We are utterly at sea," he said, "as to why our armed forces are carrying on war in Russia, but whatever is being done in that country in the way of armed intervention is without authority. . . . There can be no plainer usurpation of power than to conscript men to war against Germany and then to use them to take care of internal conditions in Russia."³⁷ Senator Edge (New Jersey) introduced a resolution June 23, 1919, not only declaring the state of war terminated, but ordering "That all American soldiers of the forces of the United States now in Europe shall be withdrawn from such foreign service without loss of time and be returned to the United States, except such soldiers of the United States Regular Army as have enlisted specifically for service in Europe."³⁸ Senator McCormick (Illinois) introduced a similar resolution September 8, expressing it as the sense of the Senate "that no additional troops be sent overseas except by the express authority of Congress," and "that all troops serving in Europe and Siberia should be brought home with the utmost dispatch."³⁹

Other similar resolutions were proposed from time to time,⁴⁰ but only one was adopted, that by Senator Johnson (California), which, however, was merely a request for information as to the general policy respecting Siberia and the maintenance of troops there.⁴¹ It seems quite clear, therefore, that even

³⁷ *N. Y. Times*, Sept. 6, 1919; cf. also statement of Chairman Porter, of the House Committee on Foreign Affairs, that the drafted men were sent to Siberia with "absolutely no justification in law." *Ibid.*, Aug. 24, 1919. But compare Senator Borah's remarks in the Senate, Feb. 16, 1909: "Congress has not the power to say that an army shall be at a particular place at a particular time or shall maneuver in a particular distance. That belongs exclusively to the Commander-in-Chief of the Army." *Cong. Record*, XLIII, Pt. 3 (60 Cong., 2 Sess.), 2452. See also his speech of Nov. 4, 1919. *Ibid.*, 66 Cong., 1 Sess., esp. 8465, 8466.

³⁸ *Cong. Record*, 66 Cong., 1 Sess., 1629.

³⁹ *Ibid.*, 5284.

⁴⁰ By Senators Johnson and Poindexter, and Representatives Rhodes, Wood, and Mason. *Ibid.*, 65 Cong., 3 Sess., 3188, 3410-3417, 3786; 66 Cong., 1 Sess., 64, 4336, 4704, 4937.

⁴¹ *Ibid.*, 66 Cong., 1 Sess., 63, 1631, 1884, 1977.

under the stress of bitter partisanship and despite all its mutterings and criticisms of executive policy, Congress will be slow to deny the power of the President as Commander-in-Chief to send and maintain troops of the army and navy abroad at his discretion, or to assert any definite claim of control for itself. On the other hand, the Executive has not hesitated to define its policy or to assert its intention of adhering to and exercising its powers under the Constitution with respect to the movement of troops.⁴²

In connection with his control of military and naval operations, the President possesses numerous other powers. In fact, it is generally held that, as Commander-in-Chief, he may do practically anything calculated to weaken and destroy the fighting power of the enemy and bring the war to a successful conclusion, subject of course to the rules of civilized warfare prescribed by international law and custom.⁴³ He may employ secret agents to obtain information concerning the position, resources, and general condition of the enemy;⁴⁴ he may establish a blockade of the enemy's ports, including those of insurgent states as well as of a foreign enemy;⁴⁵ he may order an invasion of the enemy's

⁴² President Wilson stated, in a letter to Fred McAver of Chicago, that the drafted troops in Siberia were being withdrawn as rapidly as they could be replaced by volunteers, but indicated that there was no intention of withdrawing the entire expedition for some time. *N. Y. Times*, Aug. 27, 1919. Secretary Baker, in a statement to the House Military Affairs Committee, Sept. 15, 1919, insisted that the American soldiers in Siberia could not be withdrawn because of "real military and humanitarian reasons." *Ibid.*, Sept. 16, 1919. Representative Mason (Ill.) on this occasion questioned the right of the President to send troops into a country with which we are not at war, but was opposed by Representative Kahn (Cal.), Chairman of the Committee, who cited as a precedent the sending of marines into Haiti. *Ibid.* See also statement of Gen. March, Chief of Staff, before the Senate Subcommittee on Military Affairs, June 16, 1919. *Hearings before the Subcommittee*, 50, 51.

⁴³ Fairlie, *National Administration of the United States*, 33.

⁴⁴ *Totten v. United States*, 92 U. S., 105, 106 (1875).

⁴⁵ *Prize Cases*, 2 Black, 635 (1862). Ordinarily such a blockade is established by proclamation of the President. It may, however, be established without this action by the President, but by the commander of naval forces as an adjunct to naval operations against other blockaded ports and the enemy's fleet. *The Adula*, 176 U. S., 361, 366-367 (1900). President Lincoln established the blockade of the ports of the South by proclamations of Apr. 19 and 27, 1861; President McKinley the Cuban

country and establish the authority of the United States over it, altho he cannot thereby enlarge the boundaries of the United States nor extend the operation of our institutions and laws beyond the limits previously assigned to them;⁴⁶ he may even set up, on his own exclusive authority as Commander-in-Chief, a temporary government in conquered territory.⁴⁷

The appointment and dismissal of officers for the army and navy is another of the President's prerogatives as Commander-in-Chief, but one which is subject to some control by Congress.⁴⁸ In the first place, no officer can be appointed by the President until Congress has created the grade and made provision for it. President Polk complained bitterly because Congress refused to create the grade of Lieutenant-General during the Mexican War and thus permit him to appoint a commander to outrank Scott and Taylor. "My situation," he said, "is most embarrassing. I am held responsible for the War, and I am required to entrust the chief command of the army to a General in whom I have no confidence."⁴⁹ During the recent war, however, Congress gave the President authority (with the consent of the Senate) "to appoint for the period of the existing emergency such general officers of appropriate grades as may be necessary. . .,"⁵⁰ thus vesting the President with wide discretionary powers, not only of appointment but also of determining what higher grades might be necessary. Under this provision, Pershing, Bliss, and March were each appointed to the rank of full General, a grade thus revived by the President for the period of the war.⁵¹

In the second place, the appointment of all officers of the army and navy is subject to confirmation by the Senate, unless otherwise provided by law.⁵² As a matter of fact, confirmation by the

blockade by proclamations of Apr. 22 and June 27, 1898. Richardson, *Messages and Papers of the Presidents*, VI, 14, 15; X, 202-203, 206.

⁴⁶ *Fleming v. Page*, 9 How., 603, 615 (1849).

⁴⁷ *Infra*, Ch. IX.

⁴⁸ Cf. Burgess, *Political Science and Comparative Constitutional Law*, II, 261-262.

⁴⁹ *Diary of James K. Polk*, II, 393-394.

⁵⁰ *Selective Service Act* of May 18, 1917 (Public No. 12, 65 Cong.). See Sec. 8.

⁵¹ Gen. Pershing has since been commissioned permanent General, by authority of act of Congress. See *N. Y. Times*, Sept. 4, 1919.

⁵² *Constitution*, Art. II, Sec. 2, Cl. 2.

Senate has generally been required only in the case of the higher military and naval officers, the rule during the recent war being, "That officers with rank not above that of Colonel shall be appointed by the President alone, and officers above that grade by the President by and with the advice and consent of the Senate." ⁵³

Finally, Congress, under its power "to make rules for the government and regulation of the land and naval forces," ⁵⁴ may prescribe rules of eligibility governing the appointment and promotion of officers, and in that way limit to a considerable extent the President's power of appointment. It has been held, however, that such rules can prescribe only the mode in which vacancies shall be filled, and hence do not confer upon the officer next in the order of succession any right to the vacant place, nor control the President in his discretionary power to appoint some other individual. ⁵⁵ Congress can in no way dictate what appointments shall be made; it can only determine how they shall be made and limit somewhat the field of selection by prescribing certain rules. Moreover, the President is entirely free to select whom he will from among the officers for any particular duty or command, without consulting the Senate and without regard to seniority in rank. General Pershing was thus chosen to command the American Expeditionary Force in the recent war, altho he was not the ranking officer in the army at the time. In fact, any question that may arise as to the relative rank of officers in the various branches of the service is understood to be within the power of the President, as Commander-in-Chief, to settle without legislation by or consultation with Congress. ⁵⁶

The power to dismiss or remove military and naval officers, especially in time of war, is likewise considered one of the prerogatives of the President as Commander-in-Chief, and a necessary

⁵³ *Selective Service Act*, Sec. 1.

⁵⁴ *Constitution*, Art. I, Sec. 8, Cl. 14.

⁵⁵ 13 *Op. Atty. Gen.*, 13, 14; 29 *ibid.*, 254, 256. See also message of President Monroe, Apr. 13, 1822, and veto message of President Harrison, Feb. 26, 1891. Richardson, *op. cit.*, II, 132, 133; IX, 138. Cf. Taft, *Our Chief Magistrate and His Powers*, 127-128; and Story, *Commentaries*, II, 350, n. 2. During the recent war, the rules governing appointments, promotions, and assignments were announced by General Order. *Official U. S. Bulletin*, Sept. 20, 1918.

⁵⁶ *Diary of James K. Polk*, I, 284-285.

incident of his right to appoint them.⁵⁷ In fact, it has been held by distinguished authority to be an absolute power, tho one that ought to be exercised with great discretion,⁵⁸ and extends even to the removal of officers appointed with the consent of the Senate.⁵⁹ From the very organization of the government under the Constitution till the Civil War, the power to dismiss officers of the army and navy from the service was regarded as vested in the President by the Constitution, was not questioned, and came to be considered as one of the inherent powers of the Executive office.⁶⁰ Congress in 1862 specifically recognized this power of the President in an act⁶¹ which the Attorney-General later characterized as "simply declaratory of the long-established law."⁶²

However, by the acts of March 3, 1865, and July 13, 1866, Congress divested the President of his absolute power of removal at all times, requiring that in time of peace an officer could be dismissed only upon sentence of a court-martial or as commutation of such sentence.⁶³ In 1867, Congress went further, and in the Army Appropriation Act of that year provided that all army orders should pass through the General of the Army, who was required to keep his headquarters at Washington and who should not be removed, suspended, relieved from his command, or assigned to duty elsewhere, except at his own request or by the approval of the Senate.⁶⁴ President Johnson signed this act under protest, holding that it in effect deprived the President of the command of the army; and having obviously been passed as a measure designed to control him in particular, its injustice and inexpediency were soon recognized and it was soon repealed.⁶⁵ The Supreme Court further held, with regard to the act of 1866, that it was in effect only a declaration that the power thereto exercised by the President of summarily dismissing officers with-

⁵⁷ *Burgess, op. cit.*, II, 262; *Blake v. United States*, 103 U. S., 227, 236 (1880).

⁵⁸ *Memoirs of John Quincy Adams*, IV, 410.

⁵⁹ *Shurtleff v. United States*, 189 U. S., 311, 314-315 (1903).

⁶⁰ 4 *Op. Atty. Gen.*, 1, 609-613; 6 *ibid.*, 5-6; 8 *ibid.*, 230-232; 12 *ibid.*, 424-426. *Cf. United States v. Guthrie*, 17 How., 283, 306-307 (1854).

⁶¹ Act of July 17, 1862. 12 *Stat. at L.*, 594, 596 (Sec. 17).

⁶² 15 *Op. Atty. Gen.*, 421.

⁶³ 13 *Stat. at L.*, 489; 14 *ibid.*, 92.

⁶⁴ Act of Mar. 2, 1867. 14 *Stat. at L.*, 486-487 (Sec. 2).

⁶⁵ July 15, 1870.

out the consent of the Senate, should not exist in time of peace. "There was, we think, no intention to deny or restrict the power of the President, by and with the advice and consent of the Senate, to displace them by the appointment of others in their places."⁶⁶

The right of the President to make removals at his discretion in time of war remained unimpaired by these acts of Congress, and was again specifically recognized during the recent war by the Selective Service Act.⁶⁷ Efficiency Boards for examining into the qualifications of officers were provided for by that statute, but it was held that these were to be convened merely as a matter of administrative convenience for the information of the President, and "do not impair or restrict the power of the President to discharge for any cause which, in the judgment of the President, would promote the public service." It was further held that, even tho the President dismissed an officer because of the recommendation of an illegally and irregularly constituted board, "the legality of an executed discharge by the President cannot afterwards be questioned, because of the full and summary powers conferred upon him by the statute."⁶⁸ Other opinions have likewise upheld the inherent, as well as the statutory, power of the President to dismiss officers in time of war, without the consent of the Senate, or the recommendation of a board, or trial by court-martial.⁶⁹ Having once dismissed an officer, however, or accepted his resignation, the President cannot revoke that action and thereby restore the officer to his rank and office, but must make a new nomination and secure a new confirmation by the Senate, if confirmation was required in the first instance.⁷⁰

In spite of the restrictions that have been noted, the President's power to appoint and dismiss officers is such as to give him practically complete control of the army and navy, especially in time of war, and to add considerably to his powers and

⁶⁶ *Blake v. United States*, 103 U. S., 227, 236 (1880).

⁶⁷ Secs. 1, 9.

⁶⁸ Opinions of Acting Judge Advocate General Mayes, May 10 and July 15, 1918, in Wigmore, *Source-Book of Military Law and War-Time Legislation*, 752-755, 790-794.

⁶⁹ Cf. opinion of Acting Judge Advocate General Ansell, Apr. 9, 1918. *Ibid.*, 731-735.

⁷⁰ *Mimmack v. United States*, 97 U. S., 426, 435, 437-438 (1888); *Memoirs of John Quincy Adams*, VII, 14.

prestige as Commander-in-Chief. It is a power that was feared greatly at the beginning,⁷¹ and it is a power that needs to be exercised with due caution lest political expediency rather than military fitness become the criterion for selection.⁷² On the whole, it can be said that the President has in his exercise of this tremendous power generally placed the winning of the war above any thought of personal or political advantage to himself.

It might be well here to point out some distinctions between the President's control over the army and navy, and his control over the militia, for his powers of command with regard to the latter are considerably more limited than those with respect to the former. In the first place, the President is not at all times the commander-in-chief of the militia, as he is of the regular army and navy. The report of the Committee on Detail in the Convention of 1787 (on August 6) had made the President "commander-in-chief of the Army and Navy of the United States, and of the militia of the several States,"⁷³ thus making no distinction between the power of command over the militia and that over the regular forces, but giving the President complete command of both at all times. When the report came before the Convention, however (on August 27), objection was immediately made and Mr. Sherman's amendment giving the Executive command of the militia only "when called into actual service of the United States" was adopted with but two dissenting votes.⁷⁴ That change in language placed a very definite restriction on the power of the President to command the militia only upon the stated occasions, it being at other times under the command of the executive of each particular state.

⁷¹ See Luther Martin's letter to the Maryland legislature. *Elliot's Debates*, I, 379.

⁷² For an interesting insight into the problem that sometimes confronts the President in this connection, see *Diary of James K. Polk*, I, 412-413. President Wilson has been accused of being guided chiefly by political considerations in declining to give ex-President Roosevelt a command during the recent war, and in refusing to assign Gen. Wood to overseas duty.

⁷³ *Madison's Journal* (Hunt ed.), II, 86.

⁷⁴ *Ibid.*, II, 255. The jealous care with which the states wished to preserve the militia as distinctively state troops under the command of state authorities is shown further by the various amendments proposed in the state ratifying conventions. See *Elliot's Debates*, I, 331, 335; II, 545-546, 552; III, 660; IV, 108, 245.

In the second place, the President cannot order the militia into "the actual service of the United States" and thus become its commander-in-chief, simply upon his own authority. The Constitution gives the President no authority in that respect, but vests in Congress the power "to provide for calling forth the militia."⁷⁵ It is true that Congress has carried out this constitutional provision by giving the President in turn definite statutory authority to call out the militia under certain circumstances; nevertheless it also remains true that while the President's power to command the army and navy is complete and exclusive, he has over the militia, in the words of Hamilton, "only the occasional command of such part as by legislative provision may be called into the actual service of the Union."⁷⁶

Thirdly, the President is very definitely limited in the purposes for which he may use the militia, even after it has been lawfully called out and placed under his command. The Constitution gives Congress the right to provide for calling forth the militia only "to execute the laws of the Union, to suppress insurrections, and to repel invasions,"⁷⁷ and of course Congress cannot empower the President to use the militia for any other purposes.

The President has, however, been granted as wide powers as this constitutional provision will permit. By the Act of September 29, 1789, Congress authorized the President to call out the militia to repel Indian invasions,⁷⁸ and the Act of May 2, 1792, extended that authority to include all the cases mentioned in the Constitution. This act, as well as the Act of February 28, 1795, broadened the power of the President still further by authorizing him to call out the militia not only in case of actual invasion, but also whenever there is "imminent danger of invasion from any foreign nation or Indian tribe,"⁷⁹ thus introducing for the first time the element of discretion. By means of amendments

⁷⁵ *Constitution*, Art. I, Sec. 8, Cl. 15.

⁷⁶ *The Federalist*, No. 68 (69) (Goldwin Smith ed., p. 381). See also *Johnson v. Sayre*, 158 U. S., 109, 115 (1895). Cf. President Fillmore's discussion of the distinction between the President's powers in this respect in his message of Feb. 19, 1851. Richardson, *op. cit.*, V, 104.

⁷⁷ *Constitution*, Art. I, Sec. 8, Cl. 15.

⁷⁸ *Annals of Cong.*, 1 Cong., II, App., 2199 (Sec. 5).

⁷⁹ *Ibid.*, 2 Cong., App., 1370 (Sec. 1); 3 Cong., App., 1508 (Sec. 1).

and supplementary acts, the powers of the President in this respect have been still further broadened and amplified.⁸⁰

Several important constitutional questions as to the power of the President have been raised under the provisions of these acts. Thus, when President Madison called out the militia for service in the War of 1812, the question immediately arose as to where the power rested to determine when the emergency contemplated by the Constitution existed. The governors of three states (Massachusetts, Connecticut, and Rhode Island) refused to respond to the call, in part on the ground that it was within the power of the executive of each state to determine whether the need for militia was so great as to warrant its being called out, and that in their opinion no such emergency existed at that time. In this opinion they were supported by the Massachusetts Supreme Court and the Hartford Convention.⁸¹ Secretary of War Monroe, however, dissented vigorously from this view and held that it was within the discretion of the President alone to determine the existence of a constitutional exigency for calling out the militia.⁸² He was supported at the time by the committee of Congress chosen to investigate the situation,⁸³ and later by the Supreme Court,⁸⁴ and it is now generally recognized that the President has exclusively this discretionary authority.

Another much-disputed question concerns the extent to which the President may use the militia outside the limits of the United States. In the War of 1812, in the Seminole War of 1818, and in the Mexican War of 1846, the militia was ordered out and actually used across the border of the United States,⁸⁵ the action

⁸⁰ Acts of July 29, 1861; Dick Militia Act of 1903; National Defense Act of 1916. 12 *Stat. at L.*, 281; 32 *ibid.*, 775, 776; 39 *ibid.*, 166, 201.

⁸¹ McMaster, *History of the People of the United States*, III, 544-546; IV, 251; *Am. State Papers, Mil. Affairs*, I, 605, 610-612; 8 *Mass.*, 548, 549.

⁸² *Am. State Papers, Mil. Affairs*, I, 605-606.

⁸³ See its report, *ibid.*, I, 604.

⁸⁴ *Martin v. Mott*, 12 Wheat., 19, *31-32 (1827); *Luther v. Borden*, 7 How., 1, 43 (1848). The various occasions upon which the militia has been called into the federal service are cited by Quincy Wright in "Military Administration," in *Report of the Efficiency and Economy Committee, State of Illinois, 1915*, 897-903.

⁸⁵ McMaster, *op. cit.*, III, 438; IV, 12-18; Quincy Wright, *op. cit.*, 898, 899.

in every case being based on the authority for its use in repelling invasions. There was some attempt in Congress in 1812 to give the President definite statutory authority to use the militia forces outside the United States, but after a debate in which most of the members seemed to think such use unconstitutional, the matter was left unsettled.⁸⁶ In the Seminole War of 1818, specific authority was given to use the troops (consisting largely of militia) across the Florida border in case of necessity,⁸⁷ and in the Mexican War the President was expressly authorized to call out militia to serve during the war, which it was known would be waged on enemy soil.⁸⁸ Quite recently Congress again showed its inclination to permit the use of militia outside the limits of the United States when in the amendment of 1908 to the Dick Militia Act of 1903, it was provided that when called out, "the militia shall continue to serve during the time so specified, either within or without the territory of the United States unless sooner relieved by the order of the President."⁸⁹ A similar provision was included in the Act of February 16, 1914, with regard to the naval militia.⁹⁰

The constitutionality of these provisions has been in dispute. A portion of the militia ordered into Canada in 1812 refused, on constitutional grounds, to cross the border, and a high authority thinks it doubtful whether any military court could have vindicated its jurisdiction had it attempted to punish this disobedience.⁹¹ A portion did cross, however, and the precedents of the wars of 1812, 1818, and 1846, would seem to be authority for the view that militia may be used outside the United States if necessary to repel invasion. Attorney-General Wickersham took that

⁸⁶ *Annals of Cong.*, 12 Cong., I, 728-802; *Elliot's Debates*, IV, 459-460; McMaster, *op. cit.*, III, 438.

⁸⁷ See message of President Monroe, Mar. 25, 1818. *Am. State Papers*, *Mil. Affairs*, I, 681; letter of Sec. of War Calhoun to Gen. Gaines, Dec. 16, 1817. *Ibid.*, 689.

⁸⁸ Quincy Wright, *op. cit.*, 899; cf. Upton, *Military Policy of the United States*, 196-197; Act of May 13, 1846. 9 *Stat. at L.*, 9 (Secs. 1, 2).

⁸⁹ 35 *Stat. at L.*, 399, 400 (See Sec. 3).

⁹⁰ 38 *ibid.*, 283, 284 (Sec. 4).

⁹¹ Ordonaux, *Constitutional Legislation in the United States*, 504. McMaster seems to think the refusal of the militia to cross was due to cowardice rather than to any constitutional scruples. *History of the People of the United States*, IV, 12.

view in an opinion rendered in 1912: "If the militia were called into the service of the General government to repel an invasion, it would not be necessary to discontinue their use at the boundary line, but they might (within certain limits, at least) pursue and capture the invading force, even beyond that line, and just as the Regular Army might be used for that purpose."⁹² Pomeroy, however, holds that "in no case can they be compelled to serve without the territory of the Union. The laws must be executed where they have force, and that is only within the country itself. Insurrections and invasions must be internal. We do not repel an invasion by attacking the invading nation upon its own soil." The furthest he is willing to go is to admit that the militia may be called out before the invaders have set foot upon our territory. "It is a fair construction of language to say that one means of 'repelling' an invasion is to have a force ready to receive the threatened intruders when they arrive."⁹³

While there may thus be some doubt as to whether, or to what extent, the militia may be used outside the United States in repelling invasions, practically all authorities seem to agree that it cannot be used, as militia, for the purpose of invading a foreign country or carrying on an offensive war outside the jurisdiction of the United States. Thus Attorney-General Wickersham, in the same opinion in which he held that militia might be taken across the border to repel an invasion, held the act of 1908 unconstitutional in so far as it authorized the use of the militia, as such, for the purposes of warfare in foreign countries.⁹⁴ Judge Advocate General Davis in 1908 had rendered an opinion to the contrary, arguing that a declaration of war is a law for the execution of which the militia may be called out and sent wherever necessary to carry out its purposes;⁹⁵ but the weight of authority is in support of the view that the militia cannot as such be sent out of the United States for the purposes of a foreign war.⁹⁶

⁹² 29 *Op. Atty. Gen.*, 322, 324.

⁹³ Pomeroy, *Constitutional Law* (Bennett's ed.), 387.

⁹⁴ 29 *Op. Atty. Gen.*, 329.

⁹⁵ See *Cong. Record*, XLII (60 Cong., 1 Sess.), 6943; *cf.* opinion of Asst. Atty. Gen. Boyd on the position of the militia in the Spanish War. 22 *Op. Atty. Gen.*, 225, 227-228; 536, 540.

⁹⁶ Pomeroy, *Constitutional Law*, 387; Von Holst, *Constitutional Law*, 170; Ordronaux, *Constitutional Legislation*, 501-502; *Dig. Ops. J. A. G.* (ed. 1901), 483.

Finally, with regard to the appointment of officers for the command of the militia, the powers of the President are very much limited. The Constitution definitely reserves to the states the appointment of such officers,⁹⁷ but the Constitution is not clear as to what authority may appoint the commanding officers when several different militia units, or militia from several different states, are called into the service of the United States.

There is no doubt that the President himself may take personal command on such occasions, since he is made commander-in-chief of the militia "when called into the service of the United States," as he is of the regular army and navy at all times. President Washington was not only clear as to his right to take personal command of the militia forces upon such occasions, but, in the case of the Whiskey Rebellion in 1794, was also convinced of the necessity of exercising that right. He assumed active command of the militia forces assembled to crush the insurrection, visited the place of rendezvous, and personally directed the forward movement of the troops, living and marching with them as active commander in the field from September 25 to October 20, when, as he informed Congress in his message of November 20, "if the state of things had afforded reason for the continuance of my presence with the army, it would not have been withholden. But every appearance assuring such an issue as will redound to the reputation and strength of the United States, I have judged it most proper to resume my duties at the seat of Government, leaving the chief command with the Governor of Virginia (Major-General Henry Lee)." ⁹⁸ There was apparently some criticism of Washington's course at the time as being unconstitutional, which the President denounced as "impertinence," ⁹⁹ altho he was careful to say that "imperious circumstance alone" could justify his absence from the seat of government while Congress was in session.¹⁰⁰

Washington's action in this case was not of course a case of

⁹⁷ Art. I, Sec. 8, Cl. 16.

⁹⁸ *Am. State Papers, Misc.*, I, 84; See also letters of Washington to Maj. Gen. Daniel Morgan, Oct. 8, 1794, and to Maj. Gen. Lee, Oct. 20, 1794. *Writings of George Washington*, XII, 469-470, 479-480; cf. Oliver, *Alexander Hamilton*, 346-347.

⁹⁹ *Writings of George Washington*, XII, 474.

¹⁰⁰ *Ibid.*, 469.

exercising personal command in time of actual war, but of domestic trouble. Nevertheless it is significant as showing that Washington did not hesitate to leave his civil duties to take active command of troops in the field, even when Congress was in session, and it is not at all unlikely that he would have done the same in case of more serious difficulties with foreign powers.

As a matter of fact, it was seriously asserted during the War of 1812, that when the militia was called into the service of the United States, the President could not delegate his right of command to any officer — in other words, that he could under no circumstances appoint any other officer to command militia forces —; but that whenever different detachments of militia were called out, or militia from different states, the President was under the obligation of assuming personal command. This was the contention of the governors of the three states refusing to furnish militia, when, in reply to President Madison's call upon the militia for service during that war, they gave as one reason for objecting to letting the militia out from their jurisdiction, "That when the militia of a State should be called into the service of the United States, no officer of the regular army had a right to command them, or other person, not an officer of the militia, except the President of the United States in person."¹⁰¹

This view of the governors was sustained at the time by the Massachusetts Supreme Court,¹⁰² but was later vigorously condemned by Secretary of War Monroe, in an opinion given to a committee of Congress, February 11, 1815, in which he said that such a construction was one "for which I can see nothing in the Constitution to afford the slightest pretext." He maintained that the President was under no greater obligation to command the militia in person than the regular troops; that the power to command both was vested in him principally for the purpose of giving him that control over military and naval operations which is a necessary attribute of the executive branch of the government; that his actual presence with the troops, either militia or regular forces, was under no circumstances necessarily contem-

¹⁰¹ *Am. State Papers, Mil. Affairs*, I, 605, 610-611.

¹⁰² *Ibid.*, 611-612; 8 Mass., 548, 550. Cf. also debate in Congress, Apr. 17, 1812. *Annals of Cong.*, 12 Cong., 1 Sess., II, 1324.

plated by the Constitution; that "in construction of law he is commander-in-chief, though not present."¹⁰³

Monroe's position with regard to the meaning of the Constitution was eminently sound. It can hardly be imagined that the framers of the Constitution intended anything else than that the President should be the judge as to the wisdom and necessity of his personal presence with the troops; still less can it be imagined that any distinction was intended between the President's obligations in that respect toward the militia and the regular forces. The general practise on all occasions upon which the militia has been called out, as well as authoritative opinion, would therefore indicate that when the militia has been called into the service of the United States, it comes under the control of the President as Commander-in-Chief, and may be commanded by him personally or by any officer designated by him, whether of the regular or militia forces.¹⁰⁴

¹⁰³ *Am. State Papers, Mil. Affairs*, I, 606.

¹⁰⁴ Ordronaux, *Constitutional Legislation in the United States*, 505; 2 *Op. Atty. Gen.*, 711; Story, *Commentaries*, II, 316 n; *Am. State Papers, Mil. Affairs*, II, 102.

CHAPTER VIII

POWERS OF MILITARY JURISDICTION

For the exercise of military jurisdiction, two principal military tribunals have come into being — courts-martial, for the trial of offenders against military law, and military commissions, for the trial of offenders against the laws of war and under martial law.¹ The authority of the former is conferred and defined largely by statute, under the power given to Congress “to make rules for the government and regulation of the land and naval forces;”² while the authority of the latter is derived principally from the common law of war.³

Altho the authorization of courts-martial is thus in the hands of Congress, their control afterwards rests almost exclusively with the executive branch of the government. They are created, in every case, by military order issued by commanding officers having authority under the Articles of War to call them into being.⁴ “They are creatures of orders, the power to convene them, as well as the power to act upon their proceedings, being an attribute of command.”⁵

¹ For the distinction between military law and martial law, see *Manual for Courts-Martial, U. S. Army* (ed. 1917), 1-2; Davis, *Treatise on the Military Law of the United States* (2nd ed.), 5; Birkhimer, *Military Government and Martial Law* (2nd ed.), 371-391. See also an excellent tabular statement in Davis, *op. cit.*, 12.

² *Constitution*, Art. I, Sec. 8, Cl. 14. The rules enacted by Congress under this provision are for the most part included in what are called the Articles of War. The latest revision of these may conveniently be found in *Manual for Courts-Martial*, 305-329 (App. I); also a concise history of the Articles in the same Manual, ix-xiii.

³ See Lieber's Instructions for the Government of Armies of the United States in Time of War, G. O. 100, A. G. O., 1863, in Birkhimer, *op. cit.*, 635.

⁴ Davis, *Treatise on Military Law*, 16.

⁵ *Dig. Ops. J. A. G.*, (ed. 1901), 283.

The President is expressly authorized by statute to convene general courts-martial under certain circumstances.⁶ He is by no means, however, limited to that specific case, nor dependent upon statutory authority, but is empowered to convene such courts-martial "generally and in any case," by virtue of his constitutional authority as Commander-in-Chief.⁷ In an opinion rendered June 6, 1877, Attorney General Devens, after reviewing the law and precedents on this subject, said: "The authority of the President to appoint general courts-martial, in cases wherein he is not expressly authorized so to do by Congress, may therefore be regarded as well established. It rests directly upon the provision of the constitution which makes him Commander-in-Chief, as interpreted by the law and usage of the military service existing when that instrument was framed; it is sustained by the doctrine laid down in American works of authority on courts-martial, the views expressed by one of the standing committees of the House (that on Military Affairs) whose special business it is to make itself conversant with subjects of this character, and an official opinion of the late distinguished head of the Bureau of Military Justice, Judge Holt; and, moreover, it is confirmed by long-continued practice, extending back nearly to the beginning of the Government."⁸

That power of the President has further been supported by the Judiciary Committee of the Senate;⁹ and it has been exercised on numerous occasions, both before and after the passage of the statute in question, notably in the cases of Brigadier General Hull (1813), Major General Wilkinson (1814), Major General Gaines (1816), Major General Twiggs (1858), Brigadier General Paine (1865), and many others.¹⁰ The power so exercised is "a striking illustration," as was said by one authority, "of an undefined constitutional power, for it is nothing less than the power to constitute tribunals with judicial jurisdiction extending even to trials for capital offenses."¹¹

⁶ Act of May 29, 1830. 4 *Stat. at L.*, 417.

⁷ *Swaim v. United States*, 165 U. S., 553, 558 (1897); *Dig. Ops. J. A. G.*, 568; Davis, *op. cit.*, 17.

⁸ 15 *Op. Att. Gen.*, 302-303. See also *ibid.*, 297-301.

⁹ Report No. 868, Mar. 3, 1879, 45 Cong., 3 Sess., cited in Davis, *op. cit.*, 17, n.

¹⁰ See list of courts-martial convened by order of the President in 15 *Op. Att. Gen.*, 301-302.

¹¹ Lieber, *Remarks on Army Regulations*, 25.

The fact that military commanders subordinate to the President may also upon occasion convene courts-martial, can in no sense be understood as a limitation upon the President's constitutional power to summon these courts at his discretion. "A military officer cannot be invested with greater authority by Congress than the commander-in-chief, and a power of command devolved, by statute, on an officer of the Army or Navy is necessarily shared by the President. . . . Since the earliest legislation of our Government it has undoubtedly been understood and intended that whatever powers were granted to general officers were, at the same time, granted and intended to be shared by the President . . . whose name is understood as written in in every statute which confers upon a military officer military authority." ¹²

The President may, however, act through his subordinates. Thus, a convening of a general court-martial by the Secretary of War is held to be in law a convening by the President, and as legal as if the President himself had signed the order, such act of the Secretary being purely administrative and in law the act of the President whom he represents.¹³

The constitution of general courts-martials is also subject to the control of the Executive. The appointing authority, whether it be the President or a subordinate commanding officer, designates the number of officers, between the statutory maximum (13) and minimum (5), that are to constitute any particular court in any case, and his decision is final.¹⁴ Even during a trial members of a court may be relieved from duty with the court and ordered to other service, or new members may be added, without affecting the functioning of the court or the validity of its proceedings, provided merely that the membership is not reduced below the minimum nor increased beyond the maximum.¹⁵ Even the reduction of a court below the minimum does not dissolve it, its sittings being merely interrupted until sufficient new members are added, and the validity of its proceedings being unaffected. "Thus the membership of the

¹² Davis, *op. cit.*, 17, n; *cf.* 8th Article of War, in *Manual for Courts-Martial*, 309-310.

¹³ *Dig. Ops. J. A. G.*, 290, 568, 644-645.

¹⁴ *Martin v. Mott*, 12 Wheat., 19, 34-35 (1827).

¹⁵ Of course there are certain rules requiring the reading of the previous record to the new members, etc., but there is in no sense a retrial.

court, both as to numbers within statutory limits and as to personnel, is entirely within the control of the appointing or superior military authority at all times."¹⁶

The President also has entire control over the methods and procedure of courts-martial.¹⁷ The procedure for preferring charges and bringing the accused to trial is prescribed almost exclusively by regulations and the customs of the service, while the rules of evidence are those of the federal courts as modified by executive regulations.

Likewise, the President may to a large extent control the findings and sentence of courts-martial. The Articles of War expressly provide that the approval of the appointing officer or of his successor in command is a condition precedent to the execution of any sentence, and that the appointing authority may approve or disapprove the finding, or approve or disapprove the whole or any part of the sentence.¹⁸ The President acts as the reviewing authority in all cases tried by courts-martial convened by himself, either under his general authority as Commander-in-Chief, or as expressly provided by statute, in cases of sentences respecting general officers, in cases of sentences of death or dismissal adjudged in time of peace, and in all cases submitted to him for action in time of war. He may approve or disapprove in whole or in part the findings or the sentence, or he may mitigate the punishment.¹⁹

Also, by custom of the service, the President or other appointing authority may return the record in any case for reconsideration and revision, whether the finding is guilty or not guilty. A rule of procedure prescribed by President Wilson, effective August 10, 1919, modified this in so far as it abolished the power to return a finding of acquittal for reconsideration or any sentence for revision upward,²⁰ but of course another President or

¹⁶ E. M. Morgan, in *Yale Law Jour.*, XXIX, 60-61.

¹⁷ See 38th Article of War, in *Manual for Courts-Martial*, 314.

¹⁸ 46th and 47th Articles of War. *Ibid.*, 315-316.

¹⁹ *Dig. Ops. J. A. G.*, 568-569. But when such approval or disapproval has once been given and the accused duly notified, it is beyond the power of the President to change his decision, even though his action may afterwards be found to have worked an injustice. 15 *Op. Atty. Gen.*, 290, 297. Of course the President may still pardon the accused, if punishment is unexecuted.

²⁰ G. O. 88, W. D., sec. 1, July 14, 1919, quoted in *Yale Law Jour.* XXIX, 63, n.

President Wilson himself might revoke this order and thus restore the former practise. While the Executive has thus almost complete control over the findings and sentences of courts-martial, Congress has no power whatever either to revise or reverse their judgments.²¹

As in the case of the convening of courts-martial, so the action of the President respecting their procedure, findings, and sentence, while it should be the result of his own judgment,²² need not be under his own hand,²³ any action of authorized subordinates, such as the Secretary of War and the Secretary of the Navy, being presumed in law to be the act of the President.²⁴ But confirmation of findings and sentence by some Executive authority being required in all cases before execution of sentence, courts-martial can hardly be considered as anything but advisory bodies, with the power of making recommendations or of reporting findings of fact and conclusions of law to a non-judicial superior, whose principal function is that of an executive.²⁵ "The system then is clearly one of review by superior military authority, which may, but need not, ask or follow the opinion of legal advisers, and is in no respect judicial. . . . The principle at the foundation of the existing system is the supremacy of military command. To maintain that principle, military command dominates and controls the proceeding from its initiation to the final execution of the sentence."²⁶

Courts-martial differ widely, therefore, from civil courts. The latter are created by statute, which also describe their composition, define their jurisdiction and procedure, and determine the times and places of their sessions. Courts-martial, tho authorized by statute, are created and dissolved in every case by executive authority; the Executive likewise determines their composition, defines their procedure, and controls their findings and

²¹ *Am. State Papers, Mil. Affairs*, V, 17-18.

²² *Runkle v. United States*, 122 U. S., 543, 557 (1887).

²³ *United States v. Fletcher*, 148 U. S., 84, 88-89 (1893).

²⁴ *Ibid.*, 91; *United States v. Page*, 137 U. S., 673, 679-680 (1891); *Bishop v. United States*, 197 U. S., 334, 341-342 (1905).

²⁵ Glenn, *The Army and the Law*, 35-42.

²⁶ E. M. Morgan, *op. cit.*, 65, 66. The opinion of the Judge Advocate General is in some cases required before execution of sentence, but only by General Order. His advice is generally followed by the reviewing authority, but not necessarily, and it has been disregarded.

sentences. It therefore seems correct to say, as do most authorities, that courts-martial are no part of the judiciary of the United States, but simply agencies or instrumentalities of the Executive.²⁷

Military commissions as contrasted with courts-martial, are of comparatively recent origin in the United States, having been initiated by General Scott in Mexico in 1847.²⁸ Courts-martial, as has already been noted, are instituted for the trial of offenders against military law, that is, their jurisdiction is restricted by statute to military persons and to certain specific offences defined by law. Hence other tribunals have been found necessary for the trial of civilians as well as military persons, who are accused of criminal acts contrary to the common laws of war and under martial law, and for this purpose the military commissions have been established. Thus the military commission initiated by General Scott was mainly for the punishment of murder, robbery, and other violent crimes, committed either by civilians or military persons, and not at that time cognizable by a court-martial. At the same time another tribunal, called the "council of war," was inaugurated for the punishment of offenses pecu-

²⁷ Davis, *op. cit.*, 15; *Dig. Ops. J. A. G.*, 283; Willoughby, *Constitutional Law*, II, 1197. S. T. Ansell, recently Acting Judge Advocate General, admits this conclusion, but criticizes severely the system that makes such a conclusion necessary. See his article, "Military Justice," in *Cornell Law Quar.*, V, 11-17 (Nov. 1919), esp. 5-7. But compare the Supreme Court opinion approving the following statement by Attorney General Bates: "The whole proceeding from its inception is judicial. The trial, findings, and sentence are the solemn acts of a court organized and conducted according to the prescribed forms of law. It sits to pass upon the most sacred questions of human rights that are ever placed on trial in a court of justice; rights which, in the very nature of things, can never be exposed to danger nor subjected to the uncontrolled will of any man, but which must be adjudged according to law." *Runkle v. United States*, 122 U. S., 543, 558 (1887). For an excellent review and criticism of the present court-martial system, see an article, already occasionally referred to, by E. M. Morgan, "The Existing Court-Martial System and the Ansell Articles," *Yale Law Jour.*, XXIX, 52-74 (Nov., 1919). For a defense of the present system, see an article by G. G. Bogert, professor of law in Cornell University and recently Judge Advocate of the 78th Division, "Courts-Martial: Criticisms and Proposed Reforms," in *Cornell Law Quar.*, V, 18-47 (Nov., 1919).

²⁸ See Gen. Scott's G. O. No. 287, Sept. 17, 1847, in Birkhimer, *op. cit.*, 581-583 (Appendix I, Par. 10, 11.).

liar to war, and especially crimes by members of guerilla bands. Early in the Civil War these two tribunals were, by practise of the military commanders and sanctioned by the War Department, united into the one court called the "military commission."²⁹

The authority for the creation of military commissions may therefore be said to be the same as that for the prosecution of war and for the exercise of military government and martial law — they are "merely an instrumentality for the more efficient execution of the laws of war,"³⁰ and as such are but another agency of the Executive. Tho derived from the common law of war, the authority of military commissions has been recognized in statutes,³¹ in executive proclamations,³² in opinions of Attorneys-General,³³ and in rulings of the Supreme Court,³⁴ so that it is now "as well known and recognized in the laws of the United States as a court-martial."³⁵

The President has practically complete control over the military commissions. There is no statute prescribing how or by whom they are to be constituted, or how they are to be composed. In practise, however, they have been created by the same authorities as are empowered to order courts-martial, which means the President himself at his discretion or his military commanders acting under his authority. Attorney-General Speed in 1865 upheld the right of the President to create such military tribunals even for the trial of non-military persons — in this case the assassins of President Lincoln: "I do not think," he said, "that Congress can, in time of war or peace. . . create military tribunals for the adjudication of offences committed by persons not engaged in, or belonging to, such forces. . . But it does not follow that because such military tribunals cannot be

²⁹ Winthrop, *Abridgment of Military Law* (2nd ed.), 331-332.

³⁰ *Ibid.*, 331.

³¹ Acts of Mar. 3, 1863 (sec. 30); July 2, 1864 (sec. 1); July 4, 1864 (secs. 6, 8); Mar. 2, 1867 (sec. 3); and several later appropriation acts.

³² Proclamations of Sept. 24, 1862 and Apr. 2, 1866. Richardson, *Messages and Papers of the Presidents*, VI, 98-99, 429-432.

³³ 5 *Op. Atty. Gen.*, 55; 11 *ibid.*, 297; 12 *ibid.*, 332; 13 *ibid.*, 59; 14 *ibid.*, 249.

³⁴ *Ex parte Vallandigham*, 1 Wall., 243 (1863); *Ex parte Milligan*, 4 Wall., 2 (1866).

³⁵ Davis, *Treatise on Military Law*, 308, n.

created by Congress. . . that they cannot be created at all." The Attorney-General held that under the laws of war, which constitute the greater part of the law of nations and therefore are a part of the law of the land, military commanders are authorized to create and establish military commissions or other tribunals for the trial of offenders against the laws of war, whether these offenders are active or secret participants, that "obedience to the Constitution requires that the military should do their whole duty; they must not only meet and fight the enemies of the country, in open battle, but they must kill or take the secret enemies of the country, and try and execute them according to the laws of war."³⁶

The composition of military commissions is entirely within the authority of the President to determine. There being no statutory maximum or minimum as to the number of members, as in the case of courts-martial, the discretion of the President is even wider than for those tribunals. Military commissions have, however, usually been composed of five members; less than three would be contrary to precedent; but any number would be legal.³⁷

The jurisdiction of military commissions is not defined by statute, but extends in practise to violations of the laws of war, whether by civilians or military persons, in occupied enemy territory or in territory under martial law.³⁸ The power of the President to institute military government over occupied territory is exclusive,³⁹ and in that respect he controls the jurisdiction of military commissions. The power to institute martial law, while more doubtful, is generally held to belong properly, in time of war, to the Executive, as Commander-in-Chief. "The power of the Executive to prosecute a war precipitated upon the country carries with it by necessary implication," says one authority, "the incidental power to make use of the necessary and customary means of carrying it on successfully. If he deems the

³⁶ 11 *Op. Atty. Gen.*, 297, 298, 299, 308, 316.

³⁷ Winthrop, *op. cit.*, 333; *Dig. Ops. J. A. G.*, 463. The military commission convened by order of President Johnson for the trial of Lincoln's assassins was composed of 9 members. See Special Orders No. 211 and 216, May 6 and May 9, 1865, in Richardson, *op. cit.*, VI, 335-336, 336-337.

³⁸ Winthrop, *op. cit.*, 333; *Dig. Ops. J. A. G.*, 464.

³⁹ *Infra*, Ch. IX.

placing any district under martial law a proper measure, it is difficult logically to deny him the right to do it.”⁴⁰ In practise, martial law is always instituted by Executive authority,⁴¹ and hence military commissions are dependent upon the action of the President for their jurisdiction in that respect also. The violations of the laws of war that come under the jurisdiction of the military commissions in these cases have been held to include all cases which do not come within the jurisdiction conferred by statute on courts-martial,⁴² and in practise have included almost every conceivable offense, from the slightest sort of intercourse with the enemy to espionage and murder.⁴³

In addition to the jurisdiction conferred under the common law of war and martial law, military commissions may be used as a temporary substitute for the local civil courts, when those courts, under the stress of circumstances, have ceased to function, tho in such cases their jurisdiction should properly be regulated by the local statutes governing the courts for which they are substitutes.⁴⁴ But whether exercising jurisdiction under the laws of war or as a substitute for the local courts, there is practically no limit to that of the military commissions — if they have jurisdiction of the person and the offence, they may proceed with the trial of offences committed even before the initiation of military government or martial law.⁴⁵

The procedure of military commissions, not being prescribed by statute, is likewise under the control of the Executive. In practise, the rules of procedure laid down for courts-martial

⁴⁰ Birkhimer, *op. cit.*, 378. He admits, however, that martial law may be invoked “either by the executive or the law-making power, although the former generally will be the case.” *Ibid.*, 390. But Pomeroy criticizes the position of the dissenting justices in *Ex parte Milligan* (4 Wall., 2) that Congress may, under certain circumstances, declare martial law, as “utterly indefensible.” *Constitutional Law*, 594. Cf. Glenn, *The Army and the Law*, 185.

⁴¹ Instances of the proclamation of martial law by Executive authority are given in Winthrop, *op. cit.*, 329-330.

⁴² *Ex parte Vallandigham*, 1 Wall., 243, 249 (1863).

⁴³ See list of offences charged as “violations of the laws of war” during the Civil War, in *Dig. Ops. J. A. G.*, 465; also in Davis, *op. cit.*, 310, n.

⁴⁴ *Dig. Ops. J. A. G.*, 468.

⁴⁵ *Ibid.*, 464; Birkhimer, *op. cit.*, 533. But violations of the laws of war cannot legally be tried after the war or emergency has terminated. Winthrop, *op. cit.*, 334.

are generally observed, and authorities hold that these rules should apply as consistently as possible. That is not obligatory, however, and the powers of military commissions not being defined by law, their proceedings are legal even if details that are required in courts-martial or in civil courts are omitted, such as the administering of a specific oath to members of the court, or giving the accused the opportunity of challenge.⁴⁶

There are likewise no statutes governing the power of the military commissions to inflict punishments, hence it is a power practically without restriction. These tribunals are not limited to the penalties known to courts-martial, nor are the strictly military penalties — dismissal from the service, dishonorable discharge, and the like — generally appropriate, since the persons to be punished are usually civilians. The punishments of death, imprisonment, or fine are those usually inflicted by military commissions, but, especially during the Civil War, have included also confiscation of property, forfeiture of licenses to trade, expulsion from certain sections of the country, furnishing bonds for good behavior, and taking the oath of allegiance.⁴⁷ In no case are the proceedings or sentences of military commissions subject to appeal to, or reversal by, any civil court.⁴⁸

Military commissions, deriving their authority and jurisdiction from military usage and the common law of war, and their creation, composition, procedure, and decisions being subject to the complete control of the Executive, are therefore, even more than courts-martial, merely agencies of the Executive in his capacity as Commander-in-Chief. Through the courts-martial, as has been noted, the President is enabled to control the discipline of the armed forces and enforce military law. Through the military commissions he controls the administration of justice in war time, not only in the theater of active operations, but also in places declared by him to require the institution of martial law, and extending to all classes of civilians as well as to military persons.⁴⁹ By means of these tribunals, the President's powers to carry on the vigorous prosecution of a war are considerably

⁴⁶ Birkhimer, *op. cit.*, 533-534; Winthrop, *op. cit.*, 334.

⁴⁷ Winthrop, *op. cit.*, 335.

⁴⁸ *Ex parte Vallandigham*, 1 Wall., 243, 251-252 (1863).

⁴⁹ There are said to have been nearly 150 cases of women tried by military commissions during the Civil War. Davis, *op. cit.*, 309, n.

extended; he is through them enabled to deal effectively with that class of persons who, while not engaged in open acts of hostility, may in one way or another be interfering with the success of the military operations.

Another power of the President, which should be noted as of some importance in this discussion, is his power to grant reprieves and pardons. Tho finally vested in the President without limitation, except in cases of impeachment,⁵⁰ the debates over the adoption of the Constitution reveal considerable fear of the wartime use of this power, that is, its use especially in cases of treason. Luther Martin expressed this fear when he said to the Maryland legislature: "The power given to these persons [i. e., the President and Vice-President] over the Army and Navy is in truth formidable, but the power of Pardon is still more dangerous, as in all acts of Treason, the very offence on which the prosecution would possibly arise, would most likely be in favor of the President's own power."⁵¹ The New York ratifying convention of 1788 also showed its fear of this Executive power by proposing the following amendment: "That the executive shall not grant pardons for treason, unless with the consent of the Congress; but may, at his discretion, grant reprieves to persons convicted of treason until their cases can be laid before the Congress."⁵²

The reason for vesting this power in the President was, however, well stated by Hamilton when he wrote: "But the principal argument for reposing the power of pardoning in this case [i. e., in case of treason] in the chief magistrate is this: in seasons of insurrection or rebellion there are often critical moments when a well-timed offer of pardon to the insurgents or rebels may restore the tranquillity of the commonwealth, and which, if suffered to pass unimproved, it may never be possible afterward to recall. The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction to the measure would frequently be the occasion of letting slip the golden opportunity."⁵³

⁵⁰ *Constitution*, Art. II, Sec. 2, Cl. 1.

⁵¹ *Farrand's Records*, III, 158; see also *ibid.*, 218.

⁵² *Elliot's Debates*, I, 330.

⁵³ *The Federalist*, No. 73 (74) (Goldwin Smith ed., p. 411). But Hamilton's own draft of a constitution contained this clause: "He shall have

The Congress has on occasion attempted to assert some authority and to exercise some control with respect to the granting of pardons, particularly in cases of rebellion and treason.⁵⁴ the courts have uniformly held that the power of the President is complete and exclusive, and can in no way be restricted or limited in its effects by Congress.⁵⁵ A pardon may thus be granted by the President before or after conviction, absolutely or upon conditions, and the ground for its exercise is wholly within the discretion of the President.⁵⁶

Pardon may also be granted, in the form of a proclamation of amnesty, to a whole class of offenders, without any special congressional authority.⁵⁷ President Washington in this way pardoned the participants in the Whiskey Rebellion of 1794;⁵⁸ President Adams the Pennsylvania insurgents of 1799;⁵⁹ President power to pardon all offences, except treason, for which he may grant reprieves, until the opinion of the Senate and Assembly can be had; and, with their concurrence, may pardon the same." *Elliot's Debates*, V, 587.

⁵⁴ See Acts of July 17, 1862 and July 12, 1870. 12 *Stat. at L.*, 589, 592 (Sec. 13); 16 *ibid.*, 230, 235.

⁵⁵ *Ex parte Garland*, 4 Wall., 333, 380 (1866); *United States v. Klein*, 13 Wall., 128, 139-140 (1871). See also Taft, *Our Chief Magistrate and His Powers*, 119-120; Bascom, *Growth of Nationality*, 120-122; Glenn, *The Army and the Law*, 111.

⁵⁶ A striking instance of pardon before conviction is the case of Maj. Gen. Gaines in 1846. Altho found guilty by a Court of Enquiry of having violated orders and acted illegally in calling out large bodies of militia and volunteers without authority, and by these acts having greatly embarrassed the government and cost the treasury "many hundreds of thousands of dollars," as the President himself said, nevertheless President Polk refused to convene a court-martial but ordered all further prosecution stopped. *Diary of James K. Polk*, I, 450, 480; II, 82-83. The President has also frequently used his power of pardoning before conviction as a means of securing the return to duty of deserters from the military service. See, for example, General Orders Nos. 43 and 102, July 3, 1866, and Oct. 10, 1873, issued by the direction of the President, cited in 20 *Op. Atty. Gen.*, 345; also executive proclamations in Richardson, *op. cit.*, VI, 163, 164, 233, 278. For instances of the exercise of the pardoning power after conviction for treason, see McKinney, "Treason under the Constitution of the United States," *Illinois Law Rev.*, XII, 381-402 (Jan., 1918).

⁵⁷ 20 *Op. Atty. Gen.*, 330.

⁵⁸ Proclamation of July 10, 1795. Richardson, *op. cit.*, I, 181.

⁵⁹ Proclamation of May 21, 1800. *Ibid.*, 303.

Madison the so-called Barataria pirates who operated during the War of 1812.⁶⁰ President Lincoln also used this means of offering conditional pardon to the rebels in the Civil War;⁶¹ while President Johnson issued four separate proclamations of amnesty and pardon, at first excluding a large number of classes, and finally granting a full and general pardon to all participants in the Rebellion.⁶²

The chief significance of the power of pardon lies not only in this that it permits the President to offer clemency at his discretion and to correct acts of injustice done under the stress of war,⁶³ but that it also enables him practically to neutralize the effect of statutes passed by Congress for a very definite purpose. Thus the Confiscation Acts of the Civil War⁶⁴ provided for the confiscation of all property used in aid of the rebellion, and of the property of certain classes in the Confederacy, whether used in aid of the rebellion or not; while the Captured and Abandoned Property Act⁶⁵ turned over to the Treasury the proceeds of all property picked up by Federal troops, leaving it to the owner to assert his claim in the Court of Claims on establishing his loyalty. For all these Acts, the Supreme Court held that a pardon operated to purge the claimant of disloyalty,⁶⁶ and hence by granting a general pardon the President was enabled to overrule completely the intent of Congress in passing these acts.

Likewise with respect to such acts as the Espionage Act, pass-

⁶⁰ Proclamation of Feb. 6, 1815. Richardson, *op. cit.*, I, 558-560.

⁶¹ Proclamations of Dec. 8, 1863 and Mar. 26, 1864. *Ibid.*, VI, 213-215, 218.

⁶² Proclamations of May 29, 1865; Sept. 7, 1867; July 4, 1868; and Dec. 25, 1868. *Ibid.*, VI, 310-312, 547-549, 655-656, 708.

⁶³ The Clemency Board appointed by the President to review court-martial cases adjudged during the recent war passed upon 2,857 cases from Feb. 25 to Apr. 25, 1919, and made a partial or complete remission of the sentences in 91 per cent of the cases considered. *N. Y. Times Current Hist. Mag.*, X, 62 (July, 1919). President Lincoln's generous use of the pardon toward soldiers convicted of purely military offenses is well known.

⁶⁴ Acts of Aug. 6, 1861 and July 17, 1862. 12 *Stat. at L.*, 319, 589.

⁶⁵ Act of Mar. 12, 1863. *Ibid.*, 820.

⁶⁶ *United States v. Padelford*, 9 Wall., 531, 542-543 (1869); *United States v. Klein*, 13 Wall., 128, 142 (1871).

ed during the recent war with Germany, the President might, by a general pardon, overcome the purpose of Congress and restore those convicted of disloyalty and obstruction to their full rights as loyal citizens.⁶⁷

⁶⁷ Shortly after the signing of the armistice, a strong movement developed for the pardon of the so-called "political prisoners" convicted during the war. See, for example, a pamphlet, "Political Prisoners in Federal Military Prisons," published by the National Civil Liberties Bureau, Nov. 21, 1918. See also *The Dial*, Jan. 11, 1919, and *N. Y. Times*, Dec. 26, 1919. In March, 1920, Senator France (Md.) introduced a joint resolution asking that these political prisoners be pardoned. *United States Bulletin*, Mar. 15, 1920. President Wilson did not issue any such general pardon.

CHAPTER IX

POWERS OF MILITARY GOVERNMENT

Military government, or the government of occupied territory is defined as "that dominion exercised in war by a belligerent power over territory invaded and occupied by him and over the inhabitants thereof."¹ Military government in this sense must be carefully distinguished from martial law, in that the former is exercised only in time of war over the inhabitants of an occupied enemy country; while the latter may be instituted during any emergency, whether in time of war or peace, over the citizens at home. Martial law also requires a formal proclamation or declaration before it can be put into effect, while military government exists "simply as a consequence of conquest and occupation."²

The authority to institute and exercise military government arises from the right and obligation of the invading belligerent, under the laws of war, to protect his own forces and to guarantee order and security to the inhabitants of the conquered territory.³ In the United States, that right and that obligation are vested in the President, as Commander-in-Chief, and are exercised under his direction and by his subordinates.⁴ "The effec-

¹ Winthrop, *Abridgment of Military Law* (2nd ed.), 322; Cf. Birkhimer, *Military Government and Martial Law* (2nd ed.), 45; Pomeroy, *Constitutional Law in the United States* (Bennett ed.), 595; Magoon's *Reports*, 12.

² Winthrop, *op. cit.*, 322-323.

³ See Regulations of Hague Convention respecting the Laws and Customs of War on Land, Art. 43, in Scott, *Texts of the Peace Conferences at The Hague*, 225.

⁴ "Acts of military commanders in conducting the operations of war, and especially in territory in military occupation are by the presumed authority of the commander-in-chief." Finley & Sanderson, *The American Executive and Executive Methods*, 192; cf. *Mechanics Bank v. Union Bank*, 22 Wall., 276, 297 (1874).

ient prosecution of hostilities in war being devolved upon the President as Commander-in-Chief," says Winthrop, "it will become his right and duty (unless Congress otherwise provide) to exercise military government over such portion of the country of the enemy as may pass into the possession of his army by the right of conquest."⁵

Chief-Justice Chase has likewise defined military government as military jurisdiction "to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states and districts occupied by rebels treated as belligerents; . . . by the military commander under the direction of the President, with the express or implied sanction of Congress."⁶

The powers of the President with respect to military government are practically absolute, being limited, neither by the Constitution and laws of the United States nor by the laws of the country under occupation, but solely by the laws and usages of war. "It is not the civil law of the invaded country; it is not the civil law of the conquering country; it is military law — the law of war" — that governs a military occupant.⁷ As Commander-in-Chief, it is within the jurisdiction of the President to determine when the conquest of an enemy territory has been sufficiently completed to warrant or require the institution of a military government;⁸ and, in the absence of congressional action, he

⁵ *Abridgment of Military Law*, 324.

⁶ *Ex parte Milligan*, 4 Wall., 2, 141-142 (1866).

⁷ *Dow v. Johnson*, 100 U. S., 158, 170 (1879). "In such cases the laws of war take the place of the Constitution and laws of the United States as applied in time of peace." *New Orleans v. The Steamship Company*, 20 Wall., 387, 394 (1874). "The right of one belligerent to occupy and govern the territory of the enemy while in its military possession, is one of the incidents of war, and flows directly from the right to conquer. We, therefore, do not look to the Constitution or political institutions of the conqueror for authority to establish a government for the territory of the enemy in his possession, during its military occupation, nor for the rules by which the powers of such government are regulated and limited. Such authority and such rules are derived directly from the laws of war . . ." *Dooley v. United States*, 182 U. S., 222, 230-231 (1901).

⁸ *Hornsby v. United States*, 10 Wall., 224, 239 (1869). Occasionally attempts have been made to set up a military government over territory not actually under occupation and control. For example, Andrew John-

may likewise determine the duration of such military occupation and government.⁹

The President may also determine the character of the government to be established over occupied territory; that is, he may, under the laws of war, set up such political institutions and create a government with such powers as he thinks best suited for carrying out the purposes of the military occupation. Thus, during the war with Mexico, President Polk, altho he had instructed General Kearney to establish temporary civil governments in the regions conquered by him,¹⁰ disapproved and repudiated his action in organizing a government for New Mexico which gave to that region the status of a permanent territory of the United States and which recognized the inhabitants as United States citizens.¹¹

However, in spite of this expressed disapproval of the principle upon which the military government had been organized in New Mexico, the President apparently made no change in the machinery or institutions set up there by General Kearney. Moreover, he expressed no disapproval of the similar territorial government organized in California by Commodores Sloat and Stockton;¹² and certainly approved that established in March, 1862, when son was appointed military governor of Tennessee in March, 1862, when a considerable portion of the state was still unconquered by the Union forces; and General Banks, remarking that "the city of New Orleans is in reality the State of Louisiana," ordered an election held in January, 1864, for governor and other officers for the entire state. See A. H. Carpenter, "Military Government of Southern Territory, 1861-1865," in *Report, Am. Hist. Assn. 1900*, I, 465-498, esp. 477, 478. President McKinley took for granted that the capture of Manila and the surrender of the Spanish forces there "practically effected the conquest of the Philippine Islands," and therefore, on Dec. 21, 1898, ordered the extension of the military government theretofore maintained only in the city of Manila to the entire archipelago. Richardson, *Messages and Papers of the Presidents*, X, 219.

⁹ *Neely v. Henkel*, 180 U. S., 109, 124 (1901); Birkhimer, *op. cit.*, 21, 368.

¹⁰ Thomas, *History of Military Government in Newly Acquired Territory of the United States*, 101-102.

¹¹ Message to Congress, Dec. 22, 1846. Richardson, *op. cit.*, IV, 507; see also *Diary of James K. Polk*, II, 282. For description of the government set up by Gen. Kearney in New Mexico, see Thomas, *op. cit.*, 103-105.

¹² Thomas, *op. cit.*, 160-162, 165, 181. However, the President was not

1847, by General Kearney, which, altho not a territorial government in name, in fact practically annexed California to the United States as permanent territory, the inhabitants having been absolved from all allegiance to Mexico and considered as citizens of the United States.¹³

During the Civil War, military governments were also established by the President in the occupied portions of the South, and his right to do so was upheld by the Supreme Court on the ground that the conflict, "though not between independent nations, but between different portions of the same nation, was accompanied by the general incidents of an international war."¹⁴ In fact, one writer has well described the Civil War as "a broadening drama of military occupation, successive governments being established as the Confederacy gave way."¹⁵

The governments established were of a peculiar character, however, in that they were not strictly military governments in the sense in which that term is used in international law, instituted to afford protection for the occupying forces and a temporary authority for the enemy inhabitants. They involved the creation of an office not previously known in American constitutional law—that of military governor;¹⁶ and they were instituted not for the ordinary purposes of a military occupation, but with the avowed purpose "to re-establish the authority of the Federal

aware of the action taken in California when he sent his message to Congress; and his disapproval of the Stockton government may be assumed from his ignoring that regime in his later instructions to Gen. Kearney to take charge in California.

¹³ Thomas, *op. cit.*, 193-195. In October, 1847, the President expressed himself as favoring an open avowal that New Mexico and California should be retained by the United States, and that permanent territorial governments should be established. *Diary of James K. Polk*, III, 190.

¹⁴ *Dow v. Johnson*, 100 U. S., 158, 164 (1879); cf. *Coleman v. Tennessee*, 97 U. S., 509, 517 (1878).

¹⁵ Glenn, *The Army and the Law*, 97.

¹⁶ The "military governors" appointed during the Civil War were commissioned as such, and were distinct from the commanding officer of the occupying forces. They were generally selected from civil life, but for the occasion were given military rank, commonly that of Brigadier General. Previous to this, no "military governor" had ever been appointed, the commanding officer of the occupying forces merely assuming the duties of governor by virtue of his rank as the superior officer in the territory concerned.

Government . . . and to provide the means of maintaining the peace and security to loyal inhabitants . . . until they shall be able to establish a civil government.”¹⁷ With this end in view, the old state governmental machinery was gradually restored and placed in the hands of the loyal inhabitants of the occupied districts, new institutions were created where thought necessary, and new state constitutions, designed to be permanent, were required to be framed and adopted — all of which was upheld by the Supreme Court as a legitimate exercise of the President’s power, under the laws of war, to institute military governments.¹⁸

During the Spanish-American War, military governments were, by order of President McKinley, established in the Philippines, in Porto Rico, and in Cuba, at first of the general character contemplated by the laws and usages of military occupation; that is, merely temporary governments set up by the military commander for the protection of the occupying forces and the security of the inhabitants.¹⁹ In Porto Rico, however, some changes were made in the political and judicial system that were not required by military necessity, and the government is said to have been administered, even before the treaty of peace was signed, “as though the island were a permanent possession of the United States;”²⁰ while the later anomalous government for the Philippines was presaged by the sending of a commission to the islands, appointed after the signing but before the final ratification of the treaty, with instructions to “study attentively the existing social and political state of the various populations, particularly as regards the forms of local government, the administration of justice, the collection of customs and other taxes,

¹⁷ Statement of Secretary of War Stanton, quoted by A. H. Carpenter, *op. cit.*, 478.

¹⁸ “So long as the war continued it cannot be denied that he might institute temporary governments within insurgent districts, occupied by the national forces, or take measures, in any state, for the restoration of State governments faithful to the Union, employing, however, in such efforts, only such means and such agents as were authorized by constitutional laws.” *Texas v. White*, 7 Wall., 700, 730 (1868).

¹⁹ See instructions of President McKinley to the Secretary of War, issued May 19, July 13, and Dec. 21, 1898. Richardson, *op. cit.*, X, 208-211, 214-216, 219-221.

²⁰ Thomas, *op. cit.*, 307.

the means of transportation, and the need of public improvements." ²¹

Having therefore the power, as Commander-in-Chief, to institute such a temporary government for occupied territory as he may see fit, the President may also perform all the necessary functions of that government, whether executive, legislative, or judicial.²² He has, in the first place, complete control over the appointment and removal of officers for that government. He may continue in office such of the local officials as he sees fit, or he may remove them at his discretion and appoint a new set of officials, who, upon the sole authority of the President, supersede the existing officials and administer the government under his direction.

Thus, President Polk, in his instructions to General Kearney with regard to the governments to be established by him in New Mexico and California, urged him "to continue in their employment all such of the existing officers as are known to be friendly to the United States, and will take the oath of allegiance to them;" ²³ and President McKinley similarly instructed the Secretary of War in 1898. that judges and other officials of justice in the occupied territories should continue in office, if they accepted the authority of the United States and the supervision of the American commander. He reminded the Secretary, however, that under the laws of war, "if the course of the people should render such measures indispensable to the maintenance of law and order," the commander of the occupying forces had the power "to replace or expel the native officials in part or altogether, to substitute new courts of his own constitution for those that now exist, or to create such new or supplementary tribunals as may be necessary." ²⁴

In the military governments established during the Civil War, on the other hand, the power of removal was exercised exten-

²¹ The commission consisted of Jacob G. Schurman, Admiral Dewey, Maj. Gen. Otis, Charles Denby, and Dean C. Worcester. See the President's instructions to the Secretary of State, Jan. 20, 1899. Richardson, *op. cit.*, X, 222-223.

²² *Cross v. Harrison*, 16 How., 164, 190 (1853); *Leitensdorfer v. Webb*, 20 How., 176, 177-178 (1857); *The Grapeshot*, 9 Wall., 129, 133 (1869); Root, *Military and Colonial Policy of the United States*, 252.

²³ Instructions of June 3, 1846. Thomas, *op. cit.*, 102.

²⁴ Richardson, *op. cit.*, X, 209-210, 215, 220.

sively, being applied not only to public officials of low and high degree, such as state officers, judges, and mayors; but also to officers of semi-public and even private concerns, such as library officials, officers and professors at state universities, and officers of chambers of commerce. Where they were not removed, the officials were "little more than figureheads," strictly subordinate to the military commander, and holding their positions only by his permission.²⁵

The officials appointed may be either civilians or military persons, within the discretion of the appointing authority. Thus, the principal officials appointed by General Kearney in New Mexico were all civilians, including a governor, secretary, and three members of the supreme court, altho the duties of governor were later performed by military officers;²⁶ while in California, under similar conditions, the principal officials were military men under both the Stockton and Kearney regimes.²⁷ The "military governors" appointed by President Lincoln were all civilians, given military rank for the occasion,²⁸ and there seemed to be a conscious effort to fill most of the subordinate offices also with civilians. However, many of the commanding officers exercised the functions of a military governor, by virtue of their rank, in the territory occupied by the forces under their com-

²⁵ A. H. Carpenter, *op. cit.*, 481.

²⁶ Charles Bent, appointed governor by Gen. Kearney, was killed in an insurrection, Jan. 19, 1847. Secretary Vigil, who thereupon became acting governor, was appointed governor Dec. 17, 1847, by the military commander, Col. Price, and served till Dec. 11, 1848, when the duties of "civil and military governor" were assumed by Col. J. M. Washington, by virtue of his rank as commanding officer. He was in turn succeeded Oct. 23, 1849, by Col. John Munroe, who served till the end of the military regime. Thomas, *op. cit.*, 115-116, 128.

²⁷ Col. John C. Fremont acted as governor for a short time under appointment from Stockton; while under Kearney the principal offices were filled as follows: governor, Col. R. B. Mason; secretary of state, Lt. H. W. Halleck (later famous as a Civil War general and as a writer on international law); collector of customs, Capt. J. L. Folsom. Col. Mason was succeeded by Brig. Gen. Riley, who served till the organization of the state government. Thomas, *op. cit.*, 181; Winthrop, *op. cit.*, 324-325.

²⁸ Andrew Johnson was commissioned military governor of Tennessee, with rank of Brigadier General; likewise John S. Phelps of Arkansas; Edward Stanly of North Carolina; and George F. Shepley of Louisiana.

mand. During the period of the war with Spain, President McKinley placed the military governments established by him in charge of the commanding officers and their military subordinates, gradually supplanting them with civilians after the United States had acquired permanent possession.²⁹

These powers of appointment and removal may be exercised, as has been noted, either by the President directly, or through the commanding officer or other subordinate with due authority in the occupied district. Usually the commanding officer assumes the duties of a military governor by virtue of his rank, without any special appointment as such. In other cases, as in the military governments established in the South, a military governor was appointed by the President for each particular occupied district, distinct from the commanding officer in that region; while again, as in New Mexico and California, the functions of commanding officer and military governor have been performed, sometimes by different persons, sometimes by the same person. As a general rule, where the government is presumed to be strictly military in character the President has left the appointment of the officials in active charge to the commanding officer, who may then select either civilians or military officers. Thus when Secretary Vigil became acting governor in New Mexico after the death of Governor Bent, and besought the Washington authorities to appoint a successor, Secretary of War Marcy replied that the government being purely military, the appointment of a governor would be left to the commanding officer (Colonel Price).³⁰

²⁹ Maj. Gen. Wesley L. Merritt set up a military government in the city of Manila immediately upon its capture and occupation on Aug. 13, 1898, which military government was later extended to the whole archipelago by his successor, Maj. Gen. E. S. Otis, acting under the direct order of the President. Gen. Otis was succeeded on May 5, 1900, by Maj. Gen. Arthur MacArthur, who was in turn succeeded on July 4, 1901, by Maj. Gen. A. R. Chaffee. Porto Rico was occupied by forces under Gen. Nelson A. Miles, July 25, 1898, but a military government was first formally established Oct. 18, by Maj. Gen. John R. Brooke. He was succeeded on Dec. 9, 1898, by Maj. Gen. G. V. Henry, and on May 9, 1899, by Brig. Gen. G. W. Davis. In Cuba, a formal military government for the whole island does not appear to have been set up till Dec. 13, 1898, when a Division of Cuba was created, with Maj. Gen. Brooke as commander and military governor. He was succeeded in Dec., 1899, by Maj. Gen. Leonard Wood.

³⁰ Thomas, *op. cit.*, 123.

While the President's power with regard to the government of occupied territory is therefore justly said to be "necessarily despotic," it has been held that this applied only to his executive or administrative power, and not to his power to legislate for that territory. "His power to administer would be absolute," says the Supreme Court, "but his power to legislate would not be without certain restrictions — in other words, they would not extend beyond the necessities of the case."³¹ However, it seems to be within the power of the President, as Commander-in-Chief, to judge of the "necessities of the case," hence the restriction amounts in practise to very little.

The President has the power, directly or through his subordinates, to issue orders for the government of a conquered territory, at least until Congress has acted, and these orders have the force of law.³² Altho definite affirmative action on the part of the President or the military commander is required in order to change the local municipal law of the conquered territory, he may, if he thinks necessity demands such a step, abolish entirely the laws of that territory and substitute laws and regulations of his own making, or he may supplement the local municipal law with such regulations as he may deem necessary and proper.³³

President Polk in 1846 thus defined the principles to which the laws adopted for a conquered territory should conform, when he declared to Congress that "such organized regulations as have been established in any of the conquered territories for the security of our conquest, for the preservation of order, for the protection of the rights of the inhabitants, and for depriving the enemy of the advantages of these territories while the military possession of them by the forces of the United States continues,

³¹ *Dooley v. United States*, 182 U. S., 222, 234 (1901); cf. Moore's *Digest*, 271; *Raymond v. Thomas*, 91 U. S., 712, 716 (1875).

³² *Cross v. Harrison*, 16 How., 164, 190 (1853).

³³ "Until he acts, it is presumed that he intends to leave it of full effect." Glenn, *The Army and the Law*, 101, n.; *Coleman v. Tennessee*, 97 U. S., 509, 517 (1878). President McKinley, in 1898, ordered that the rule of international law which required that the municipal law of the conquered territory should be considered as remaining in force, so far as compatible with the new order and until suspended or superseded by the occupying belligerent, be adhered to as far as possible. Richardson, *op. cit.*, X, 209. Cf. Winthrop, *op. cit.*, 323; Davis, *Treatise on the Military Law of the United States*, 300-301.

will be recognized and approved.”³⁴ Accordingly, altho at that time he disapproved the attempt to give New Mexico the status of a permanent territory of the United States, as has been noted, the President apparently accepted and approved the action of General Kearney in adopting an organic law for that region, copied from the organic law of Missouri Territory,³⁵ and in putting into effect numerous other laws, compiled from neighboring state and territorial laws and from the laws of Mexico.³⁶ In California, on the other hand, the legislative council established under the Stockton government was ignored and omitted in the government set up by General Kearney under instructions from the President,³⁷ and the orders of the military governor therefore continued there to be the only source of law.

In the occupied districts of the South, elections were conducted under regulations prescribed by the military governor, conventions were held under his supervision, and the constitutions and governments created thereby were inaugurated under his authority. For example, General Banks ordered an election held in Louisiana in January, 1864, for governor and other officers, with the regulation that those entitled to the rights of United States citizens would be required to participate, “indifference” to be treated as a crime and “faction” as treason. Governor Shepley, in the same state, later ordered an election for delegates to a constitutional convention, for which he decreed the registration of all loyal citizens, determined the ratio of representation in the convention, and supervised the registration and election officers in their work. In Arkansas, elections held under the revised constitution were set aside under authority from President Lincoln, new elections were held, and new officers inaugurated; while in Tennessee also, the confirmation and approval of the military governor was apparently necessary, not only for the holding of elections, but in order that persons duly chosen might act.³⁸

³⁴ Message of Dec. 22, 1846. Richardson, *op. cit.*, IV, 507.

³⁵ It was, for example, under the provisions of this “organic law” that Secretary Vigil became acting governor of New Mexico upon the death of Governor Bent in January, 1847.

³⁶ Thomas, *op. cit.*, 103-105.

³⁷ *Ibid.*, 181.

³⁸ A. H. Carpenter, *op. cit.*, 478, 482.

This military supervision and control of elections extended during the Civil War even to the occupied districts in the border states which were, strictly speaking, not subject to military government and whose constitutional rights were pronounced as "theoretically equal to the rest of the Union." Thus, in various places in Kentucky orders and proclamations were issued by the military authorities, by which army officers were required to see that none but loyal persons voted or were candidates at the elections, or acted as election officers; in Missouri "voting contrary to orders" was declared to be a military offense; and in Maryland provost-marshal's were ordered to "assist" election judges in administering the oath of allegiance and in reporting those who failed to carry out the regulations. "In this way the military became the judge and interpreter of the civil authorities and even of the laws themselves."³⁹

The President may likewise exercise complete control over the municipalities within the occupied territory. He may, through the proper subordinates, "change or modify either the form or the constituents of the municipal establishments; may, in place of the system and regulations that formerly prevailed, substitute new and different ones."⁴⁰ Thus, during the Civil War, this municipal control extended to the founding of courts, legislation concerning property, the establishment of bureaus in charge of various city activities, the enforcement of a system of licenses, the appointment and removal of officials, the creation of police forces, and the censorship of newspapers.⁴¹

Numerous other powers with regard to the government of occupied territory that are legislative in character may also be exercised by the President. He may provide the finances necessary for the support of the occupying forces and the expenses of the administration of the territory by the levying of military contributions, the collection of the regular taxes, and the imposition of customs duties.⁴² his judgment as to the propriety

³⁹ A. H. Carpenter, *op. cit.*, 482-483.

⁴⁰ Attorney-General Griggs to the Secretary of War, July 10, 1898. 22 *Op. Atty. Gen.*, 527, 528.

⁴¹ A. H. Carpenter, *op. cit.*, 493-496; cf. Garner, *Reconstruction in Mississippi*, 38.

⁴² Lawrence, *Principles of International Law*, 445; Richardson, *op. cit.*, IV, 570-572, 672-678; Winthrop, *op. cit.*, 326; *Dooley v. United States*,

of such measures being necessarily arbitrary and absolute.⁴³ He may likewise promulgate measures for the regulation of trade and intercourse with the occupied territory;⁴⁴ establish and maintain telegraph and railroad lines, even tho their business conflict with the vested rights of private companies;⁴⁵ grant licenses and enter into contracts whose provisions are binding even after the termination of the military occupation;⁴⁶ and restrict the right of private ownership.⁴⁷

The judicial powers of the President in occupied territory are also extensive. He has complete control over the establishment, jurisdiction, and functioning of the military courts, such as courts-martial, provost courts, and military commissions.⁴⁸ In addition, the President may exercise supervision over civil courts already in existence,⁴⁹ or he may create such civil courts as he deems necessary, displacing or supplementing those already existing. Thus, in New Mexico General Kearney established a complete judicial system, consisting of a superior or appellate court and district courts, and defined their jurisdiction.⁵⁰

During the Civil War, provost courts were established by the military commanders in New Orleans and elsewhere, with civil and criminal, as well as military jurisdiction, and supplanting in many cases the lower state courts and the local police courts. President Lincoln himself, by executive order of October 20,

182 U. S., 222, 231-233 (1901). For view that the President does not have these powers, see Kent's *Commentaries*, I, 292, quoted in Moore's *Digest*, VII, 270.

⁴³ *Dow v. Johnson*, 100 U. S., 158, 165 (1879); *Herrera v. United States*, 222 U. S., 558, 571 (1912). During the Mexican War, President Polk at first gave Scott and Taylor discretionary authority to exact contributions, but neither having done so, he later made his orders "peremptory and stringent" that such exactions should be made. *Diary of James K. Polk*, III, 156. Gen. Scott is said to have collected contributions of about \$22,000 from 19 Mexican states. Winthrop, *op. cit.*, 326.

⁴⁴ *Birkhimer, op. cit.*, 272; *Fleming v. Page*, 9 How., 603, 615 (1849); *cf. A. H. Carpenter, op. cit.*, 489-493.

⁴⁵ 23 *Op. Atty. Gen.*, 425; *Magoon's Reports*, 391-407.

⁴⁶ *New Orleans v. Steamship Company*, 20 Wall., 387, 394-395 (1874); 23 *Op. Atty. Gen.*, 551, 559-563.

⁴⁷ Moore's *Digest*, VII, 264; *For. Rel. 1901*, App., 97.

⁴⁸ *Supra*, ch. VIII.

⁴⁹ See A. H. Carpenter, *op. cit.*, 484-485.

⁵⁰ Winthrop, *op. cit.*, 325.

1862, created a provisional court for Louisiana, which has been described as "the Alpha and Omega of justice for Louisiana." In this order the President appointed the judge (Charles A. Peabody), and gave the court jurisdiction over "all causes, civil and criminal, including cases in law, equity, revenue, and admiralty, and particularly all such powers and jurisdictions as belong to the district and circuit courts of the United States." He also prescribed the rules of procedure; made the decisions of the court "final and conclusive," with appeals forbidden; and vested in it the power to appoint the prosecuting attorney, marshal, and clerk. While the state laws in force were to be administered by this court "as far as possible," the orders of the military commanders were recognized as of "paramount authority."⁵¹

All of these acts of the President were upheld by the Supreme Court in several decisions,⁵² and his power, as Commander-in-Chief, to organize and practically to control the judiciary in territory under military occupation, was clearly affirmed,⁵³ with only the limitation that neither the President nor any military commander can establish a court in such occupied territory to adjudicate prize cases or to administer the law of nations.⁵⁴

Since all the powers and functions of military government are therefore concentrated in the hands of the President, with scarcely any limitation, it would not seem to be an exaggeration to characterize such government as "an absolutism of the most complete sort."⁵⁵

⁵¹ A. H. Carpenter, *op. cit.*, 485-486.

⁵² *Leitensdorfer v. Webb*, 20 How., 176 (1857); *The Grapeshot*, 9 Wall., 129 (1869); *Burke v. Miltenberger*, 19 Wall., 519 (1873); *Mechanics Bank v. Union Bank*, 22 Wall., 276 (1874).

⁵³ "When enemies' territory is occupied, or territory to which the rules of law assign that name, though it be that of a State of the Union, the President can replace its courts by courts of his own, exercising both civil and criminal jurisdiction, and disposing of life, liberty, and property, not as instruments of the judicial authority of the United States, but as instruments of the executive authority." Baldwin, *Modern Political Institutions*, 103.

⁵⁴ *Jecker v. Montgomery*, 13 How., 498, 515 (1851).

⁵⁵ A. H. Carpenter, *op. cit.*, 496; Willoughby, *Constitutional Law*, I, 390.

III. Civil Powers in Time of War

CHAPTER X

CONTROL OF ADMINISTRATION

It has been pointed out by a distinguished authority how the original American conception of executive power was to the effect that the President had been vested with military and political rather than administrative power; and further, how that conception has changed, so that now the President is generally recognized, through powers conferred by statute and derived from the Constitution itself, as "not merely the political head of the United States national government but as well the head of its administrative system."¹

This position of the President naturally becomes especially important in time of war, when the exigencies of the situation require the creation of additional governmental agencies and a vast expansion in the general field of administration. Through his constitutional powers of appointment, removal, supervision, and direction, the scope of the President's administrative authority is at such a time automatically extended, if his specific powers are not actually increased.

In addition, Congress at such a time is inclined to recognize the wisdom of Hamilton's arguments for a vigorous and unified Executive,² and to entrust exceptional administrative control to the President. That is particularly true with regard to administrative agencies created to meet the special military needs of the country. Thus the actual administration of the Draft Acts of the Civil War³ was given over to the President, altho hedged about with such an amount of statutory detail as to

¹ Goodnow, *Principles of the Administrative Law in the United States*, 73-82.

² See *The Federalist*, No. 69 (70), (Goldwin Smith ed., p. 386ff.).

³ Acts of Mar. 3, 1863, Feb. 24, 1864, and July 4, 1864. 12 *Stat. at L.*, 731; 13 *ibid.*, 6, 390.

leave him with little discretionary authority. The work of administering the provisions of the draft was carried out through a Provost Marshal General, and through enrollment boards, one for each district into which the United States was divided. Each such board was to be composed of the provost-marshal for the district, a licensed physician, and one other person, to be appointed by the President. Their duties, however, were definitely defined by statute, hence the President's authority was principally such as resulted from his control over the personnel of the administrative machinery and from his general powers of supervision.

The Selective Service Act of the recent war⁴ went much further in entrusting the President with large powers of administration. The Act provided for the registration of all male persons between the ages of 21 and 30 (later extended to include all between the ages of 18 and 45⁵), but gave the President complete authority to designate the time and place for such registration, and to prescribe the rules and regulations in accordance with which it should be held. Under this provision, President Wilson issued no less than thirteen separate proclamations, designating the various times and places for the registration.⁶ He likewise issued detailed regulations for the execution of the registration provisions of the act.

These regulations created an administrative system, consisting of the Provost Marshal General as the chief administrative officer; the governor and adjutant general of each state as his principal assistants; a board of registration for each county or corresponding subdivision, consisting of three members named by

⁴ Act of May 18, 1917. Public No. 12, 65 Cong., in Wigmore, *Source-Book of Military Law and War-time Legislation*, 460-468.

⁵ Act of Aug. 31, 1918. Public No. 210, 65 Cong., *ibid.*, 471-474.

⁶ Proclamations of May 18, June 27, June 30, July 2, 1917; May 20, June 11, June 17, June 18, Aug. 13, Aug. 31, Sept. 18, Oct. 10 (2), 1918. *U. S. Stats.*, 65 Cong., 1 Sess., Procs., 20, 30, 35, 36; *ibid.*, 2 Sess., 137, 149, 152, 155, 190, 196, 207, 212, 216. So many proclamations were issued for the reason that different registration dates were designated for the various parts of the territory of the United States. Thus June 5, 1917, was named as the first registration day in continental United States (except Alaska), July 5 in Porto Rico, July 2—Sept. 2 in Alaska, and July 31 in Hawaii; similarly with respect to the days later named under the amendatory acts of 1918.

the governor (or by the mayor in cities of over 30,000 population), none of whom were to be in any way connected with the military establishment; and one or more registrars for each voting precinct. These Presidential regulations further defined the jurisdiction and duties of these various officials in connection with the registration; prescribed the compensation of the registrars; and outlined in detail the forms and methods under which the registration should take place.⁷

The local administration of the conscription provisions of the Selective Service Act was carried out through local and district boards, appointed by the President; the former, one for each county or corresponding subdivision, consisting of three or more members, none of whom was to be connected with the military establishment;⁸ the latter, one or more for each federal judicial district, composed of such number of members, likewise civilians, as the President might determine. The duties of these boards were outlined in the act; but the President was authorized to prescribe the rules and regulations under which the boards should operate, to make rules and regulations governing their organization and procedure, and to make "all other rules and regulations necessary to carry out the terms and provisions of this section."⁹

Accordingly, President Wilson, on June 30, 1917, issued regulations, describing in detail the organization, duties, and procedure of the local and district boards;¹⁰ and on November 8, 1917, further regulations, covering in detail the jurisdiction of the official boards and auxiliary organizations, the rules and principles governing the classification of the men, the process of selection, the procedure of induction and mobilization, forms to be observed, and the like.¹¹ The boards were subject to the immed-

⁷ See *Registration Regulations*, issued as a separate pamphlet by the Government Printing Office, 1917.

⁸ As a general rule, the registration boards were reconstituted as the local boards.

⁹ Selective Service Act, Sec. 4, in Wigmore, *op. cit.*, 463-465.

¹⁰ *Rules and Regulations Prescribed by the President for Local and District Boards*, issued by the Government Printing Office, 1917.

¹¹ *Selective Service Regulations*. A second edition of these, revised and enlarged, was issued Sept. 16, 1918, in which was included, for example, the famous "work or fight" rules. It is worthy of note that the Selective Service Act itself covers only 8 pages; while the Registration Regulations constitute a pamphlet of 30 pages, the Rules and Regula-

iate supervision of the Provost Marshal General and, finally, of the President, who was empowered to "affirm, modify or reverse" any decisions made by them. It is thus clear that while the administrative machinery of conscription was provided for and barely outlined by statute, its creation, supervision, method of operation, and control were in the hands of the President.

With regard to the field of general administration, no additional powers of importance were given to the President in previous wars, beyond his ordinary powers of supervision and direction over the various executive departments and agencies. On the other hand, something was done during the Civil War to provide a congressional check on the President's administration of the war through the committee of Congress known as the Joint Committee on the Conduct of the War.¹²

The nature and extent of the recent World War, however, called for the creation of numerous new administrative agencies, and it is worthy of note that Congress, in providing for these, in almost every instance gave the President blanket authority to work out the administrative details — to create the necessary offices, to prescribe the character of their organization, and to determine upon the administrative methods to be used. Thus, the Espionage Act, altho providing for the control of exports from the United States, created no administrative agency to exercise such control, but merely specified that the export trade be carried on "under such regulations and orders, and subject to such limitations and exceptions as the President shall prescribe."¹³

Likewise, the Food and Fuel Control Act set up no administrative machinery, but authorized the President "to make such

tions for Local and District Boards one of 84 pages, and the two editions of the Selective Service Regulations booklets of 254 and 432 pages, respectively.

¹² Hosmer, *The Appeal to Arms*, 80. See also W. W. Pierson, "The Committee on the Conduct of the Civil War," in *Am. Hist. Rev.*, XXIII, 550-576 (Apr., 1918). During the recent war, an attempt was made to set up a similar committee. The Senate added a provision to the Food and Fuel Control bill, establishing a joint committee on war expenditures to be composed of 5 Senators and 5 Representatives, "to safeguard the expenditure of the appropriations bearing upon the war as made by Congress." The vigorous protest of President Wilson against the embarrassment of such a committee forced its abandonment in conference. *Pol. Sci. Quar.*, XXXII, Supp., 37, 38.

¹³ Act of June 15, 1917 (Title VII, Sec. 1). Wigmore, *op. cit.*, 493.

regulations and to issue such orders as are essential effectively to carry out the provisions of this Act," and further, "to create and use any agency or agencies, . . ." for the same purpose.¹⁴ The Trading with the Enemy Act provided for the regulation and control of trading with an enemy or ally of enemy and of the import trade, and for the censorship of foreign communications and foreign-language publications, but empowered the President to "exercise any power or authority conferred by this Act through such officer or officers as he shall direct;"¹⁵ while the Railway Control Act provided, "That the President may execute any of the powers herein and heretofore granted him with relation to Federal control through such agencies as he may determine . . ."¹⁶

By virtue of these provisions, President Wilson vested the executive administration of his instructions and proclamations concerning the export trade in the Secretary of Commerce, and established an Exports Council, composed of the Secretaries of State, Agriculture, and Commerce, and the Food Administrator,¹⁷ "to direct exports in such a way that they will go first and by preference where they are most needed and most immediately needed, and temporarily to withhold them, if necessary, where they can best be spared."¹⁸ As the administrative agencies for carrying out the purposes of food and fuel control, the President created the Food and the Fuel Administrations and the United States Grain Corporation;¹⁹ to administer the provisions of the Trading with the Enemy Act concerning censorship and the regulation of imports, he set up the Censorship Board and the War Trade Board;²⁰ while for the administration of the railroads, he

¹⁴ Act of Aug. 10, 1917 (Secs. 1, 2). Wigmore, *op. cit.*, 504.

¹⁵ Act of Oct. 6, 1917 (Sec. 5a). *Ibid.*, 548.

¹⁶ Act of Mar. 21, 1918 (Sec. 8). *Ibid.*, 580.

¹⁷ Executive order of June 22, 1917. *Official Bulletin*, June 26, 1917.

¹⁸ Statement of President Wilson. *Ibid.* By executive order of Aug. 21, 1917, the Exports Council was enlarged by adding the Chairman of the Shipping Board, and continued as an advisory body; but superseded in its control of exports by the Exports Administrative Board, composed of representatives of the Secretaries of State, Agriculture, and Commerce, the Food Administrator, and the Shipping Board. Willoughby, *Government Organization in War Time and After*, 128; *War Cyclopedia* (1st ed.), 90.

¹⁹ *Infra*, 204-208.

²⁰ *Infra*, 201, 210.

established the Railroad Administration, with Secretary of the Treasury McAdoo as Director General of Railroads.²¹

Of all the important administrative agencies established during the recent war to carry on some phase of war activity, very few were expressly created by statute,²² Congress thus apparently recognizing the importance of entrusting the details of war administration to the President. On the other hand, several war agencies, such as the Committee on Public Information and the War Industries Board, were created by the President without authority of statute, but by virtue of his powers as Chief Executive and Commander-in-Chief.²³

The establishment of all these new administrative agencies for the carrying on of particular war activities, as well as the tremendous expansion in functions and personnel of the departments and agencies already in existence, soon raised the problem of how to avoid duplication and waste and provide for the proper coördination of effort. It finally came to a point where, in the words of Senator Wadsworth (New York), "It must be apparent to every sensible man that it is utterly impossible to get any teamwork out of this conglomeration of ambitious and scattered agencies, official and unofficial, unless we create some agency that shall guide and control them all in those matters in which team work is essential for the accomplishment of great results."²⁴

This general feeling culminated in a proposal by Senator Chamberlain (Oregon), approved by the Senate Committee on Military Affairs, for a war cabinet, to be composed of "three distinguished citizens of demonstrated ability," who were to be

²¹ *Infra*, 215-216.

²² The Alien Property Custodian was thus created by law. See Trading with the Enemy Act (Sec. 6). Wigmore, *op. cit.*, 548-549. See *infra*, 212-213. Other administrative agencies of particular importance during the war, such as the Council of National Defense, the War Risk Insurance Bureau, and the Shipping Board, were expressly created by statute, but before the United States entered the war and not anticipating that event. For the account of the work of the first two of these, see Wilmoughby, *Government Organization in War Time and After*, 9-21, 339-351; for that of the Shipping Board in relation to this study, *infra*, 217.

²³ *Infra*, 197-199, 211-212.

²⁴ Speech in U. S. Senate, Feb. 5, 1918. *Cong. Record*, 65 Cong., 2 Sess., 1809. See also charts, included in the address, showing the organization and proposed reorganization of the war-making machinery. *Ibid.*, 1808-1810.

appointed by the President with the consent of the Senate, and through whom the President was to exercise "such of the powers conferred upon him by the Constitution and the laws of the United States, as are hereinafter mentioned and described." This war cabinet was to have complete jurisdiction and authority to initiate plans and policies for the prosecution of the war; to direct and procure the execution of these plans and policies; and "to supervise, coördinate, direct, and control the functions and agencies of the Government, in so far as, in the judgment of the war cabinet, it may be necessary or advisable so to do for the effectual conduct and vigorous prosecution of the existing war." The war cabinet was further to be authorized to make the rules and regulations governing its own procedure; to require information from and utilize the services of any or all executive departments, agencies, and officials of the United States and of the several states; and to make all the orders and decisions necessary to carry out these provisions. Besides the right to name its members, the President was to be given over this war cabinet, only a very limited power of review.²⁵

The bill thus proposed to confer powers under which this new war cabinet, as one Senator said, "could take absolute charge of the conduct of the war. The President would not have the authority to initiate or formulate any plans or policies for its prosecution. His power as Commander-in-Chief would be destroyed. He would be subject to the orders of the War Cabinet."²⁶ President Wilson therefore vigorously opposed this proposal, saying that it "would involve long additional delays and turn our experience into mere lost motion,"²⁷ and instead he secured the introduction, and finally the passage, of a bill containing his ideas for meeting the situation.²⁸

²⁵ The war cabinet bill was introduced by Senator Chamberlain, Jan. 21, 1918. See text of bill in *Cong. Record*, 65 Cong., 2 Sess., 1077-1078.

²⁶ Senator Shields, in U. S. Senate, Apr. 22, 1918. *Cong. Record*, 65 Cong., 2 Sess., 5836.

²⁷ Statement of Jan. 21, 1918, quoted in *Am. Pol. Sci. Rev.*, XII, 377 (Aug. 1918).

²⁸ The administration bill was introduced by Senator Overman, Feb. 6, 1918, and became law May 20, 1918. Senator Overman stated very frankly: "The bill was advocated by the President and sent to me by the President, and I have no hesitation in saying so." *Cong. Record*, 65 Cong., 2 Sess. (Apr. 3, 1918), 4883. The fight between the advocates of

This so-called Overman Act authorized the President "for the national security and defense, for the successful prosecution of the war, for the better utilization of resources and industries, and for the more effective administration by the President of his powers as Commander-in-Chief of the land and naval forces," to make such redistribution of functions among the executive agencies as he might deem necessary; to utilize, coördinate, or consolidate any existing executive or administrative agencies; to transfer any duties or powers, together with any portion of the personnel and equipment, from one such agency to another; and to make whatever regulations and issue whatever orders might be necessary to carry out these provisions. The President was further authorized to establish an executive agency for exercising such control over the production of aeroplanes and aircraft equipment as he might consider advantageous. He had no power, however, to abolish any bureau or eliminate its functions altogether, but was authorized to make such recommendations to Congress in that regard as he might deem proper. Moreover, the act was strictly a war measure, in that it was expressly provided that the authority granted was to be exercised "only in matters relating to the conduct of the present war;" and further, that the act was to remain in force no longer than "six months after the termination of the war by the proclamation of the treaty of peace," all executive agencies and functions at that time reverting to their former status under existing law.²⁹

The President was thus, by the terms of this act, given complete control over the administrative machinery of the nation as used for the purposes of the war.³⁰ The act met with considerable opposition as an unwarranted and dangerous extension of the President's power;³¹ while at least one distinguished authority held that it was entirely unnecessary, claiming that the

the Overman Bill and Senator Chamberlain's War-Cabinet bill, and the probable motives behind the latter, are described by J. M. Leake, "The Conflict over Coördination," in *Am. Pol. Sci. Rev.*, XII, 365-380 (Aug., 1918).

²⁹ See text of act in Wigmore, *op. cit.*, 586-587.

³⁰ See an excellent summary by Senator Fletcher of what might be accomplished under this act. *Cong. Record*, 65 Cong., 2 Sess. (Apr. 22, 1918), 5842.

³¹ Especially from Senators Cummins (Rep.), and Reed and Hoke Smith (Dems.).

President already had full constitutional power to make such transfers of functions and consolidations of agencies on his own initiative. "I think," said this former Attorney-General and Secretary of State, "the President has the authority to require every executive officer and every department of the Government to do anything that he directs to be done in order to prosecute this war to a successful conclusion. I think he has the power to delegate from one Cabinet officer to another the discharge of any particular duty that he thinks such a Cabinet officer can discharge better than the one upon whom it would normally be incumbent. I do certainly think that the President has all those powers. . . . As I have read the Overman bill, in so far as it proposes to authorize the President to utilize and coördinate executive agencies, . . . I would not hesitate a second to advise the President of the United States that he now possesses that power."³²

The majority in Congress felt, however, that the act was not only justified in order to avoid the suspicion or necessity of the President setting himself up as a dictator and doing the same things without definite authority of law,³³ but also that it was necessary to secure the proper coördination of effort on the part of the agencies entrusted with carrying on the various war activities of the government, and was not to be considered as warranting any abuse of power by the President.³⁴

³² Senator Knox (Rep.), in U. S. Senate, Apr. 3, 1918. *Cong., Record*, 65 Cong., 2 Sess., 4898; see also *ibid.*, 4903. A well known journal also held that the President's power over administration was practically absolute, and that if he had exercised this power, it would probably not have been questioned in Congress or by public opinion. It said, however, that the Overman Act "would dramatize the President's powers so effectively that no one could question them." *The Nation*, May 4, 1918.

³³ See Senator Harding's suggestion concerning the need of a dictator. *Supra*, ch. I, note 29. Senator Overman frequently emphasized the point that instead of exercising questionable powers without authority of law, as was done by President Lincoln, President Wilson had been careful to ask Congress for specific authority to exercise such necessary powers.

³⁴ Senator Nelson (Rep.) probably best expressed the sentiment of the majority when he said: "This opposition is founded on the assumption that the President from first to last will do nothing but wrong; that he will discontinue and dismantle all the departments instead of the proper assumption that he will utilize them to the best of his ability to carry on the war successfully. . . . In order to carry on the transportation

Moreover, there were several precedents for granting such authority as was done by the Overman Act. An act of February 14, 1903,³⁵ had authorized the President "to transfer at any time the whole or any part of any office, bureau, division, or other branch of the public service engaged in statistical or scientific work from the Department of State, the Department of the Treasury, the Department of War, the Department of Justice, the Post Office Department, the Department of the Navy, or the Department of the Interior, to the Department of Commerce and Labor." The Act of April 28, 1908,³⁶ authorized the President "for any special occasion" to transfer to the head of another department certain authority conferred upon the Secretary of Commerce; the Act of June 24, 1910,³⁷ authorized the Secretary of the Navy, with the approval of the President, to transfer the duties of the Bureau of Equipment to the other bureaus and offices of the Navy Department "in such manner as the Secretary of the Navy shall consider expedient and proper;" while by the Act of March 3, 1917,³⁸ the Bureau of Efficiency was required to investigate duplication of service in the various executive departments and establishments of the Government and make a report to the President, who was authorized, "after such report shall have been made to him, whenever he finds such duplications do exist, to abolish the same." Apparently there was no exercise of the power authorized by this last-mentioned act, for the reason that the Bureau of Efficiency was employed during the war to devise a system for the work of the War-Risk Insurance Bureau and hence had never been able to make the required report to the President.³⁹

In addition to the statutes above mentioned, others have been passed applicable to emergencies only, under which the President is authorized at such times to transfer important functions and services. Thus he is empowered, in time of threatened or of food and supplies to Europe it is necessary to have all these branches of the Government function and work together. That is all there is in this bill, and there is no use of slandering it." *Cong. Record*, 65 Cong., 2 Sess. (Apr. 3, 1918), 4886.

³⁵ 32 *Stat. at L.*, 830 (sec. 12).

³⁶ 35 *ibid.*, 69 (sec. 3).

³⁷ 36 *ibid.*, 613.

³⁸ 39 *ibid.*, 1122 (sec. 8).

³⁹ See *Cong. Record*, 65 Cong., 2 Sess. (Apr. 3, 1918), 4891.

actual war, to utilize the Public Health and Marine Hospital Service "to such extent and in such manner as shall, in his judgment, promote the public interest;" the Coast Guard, ordinarily a branch of the Treasury Department, may be transferred to the Navy, "in time of war or when the President shall so direct;" and the vessels, equipment, stations, and personnel of the Lighthouse Service and the Coast and Geodetic Survey are subject to transfer by the President to either the War or Navy Department, "whenever in his judgment a sufficient national emergency exists." Numerous acts relating to transfers of employees and officials within the Civil Service have long been on the statute-books; so also regarding the detail of military and naval officers to service with other departments or agencies.⁴⁰

The Overman Act, while going considerably further in its grant of power than anything before enacted, was therefore not entirely novel in its essential principles, especially when considered as a purely war-time measure. Its passage, however, aroused considerable speculation as to the probable action of the President under its authority. Suggestions were thrown out of possible radical changes, such as the setting up of a "War Super-Cabinet" or war council, to consist of such Cabinet members and heads of newly established bureaus as were more immediately concerned with the conduct of the war. Others did not look for any great changes, holding that the Overman Act was to be considered "more as a resource, to be ready at hand as need arises, . . . more as a club than anything else, to bring about better team work, and thus to increase efficiency."⁴¹

As a matter of fact, no startling changes, transfers, or consolidations were made by the President as a result of the Overman Act, and in no way was the regular Cabinet superseded, or the position of any of the executive departments in the field of administration impaired. President Wilson's first order under the authority of this act, issued on the very day the act went into effect, was perhaps one of the most important. This order provided for the reorganization of the Air Service, which, as a part of the Signal Corps of the Army, had up to this time been under the direction of the Chief Signal Officer.

⁴⁰ See complete list of such acts in *Cong. Record*, 65 Cong., 2 Sess. (Apr. 3, 1918), 4901.

⁴¹ See article in *N. Y. Times*, May 5, 1918.

The powers and functions of that officer were now redistributed as follows: (1) The Chief Signal Officer was left in charge of telegraph and telephone operations. (2) A Director of Military Aeronautics was created and placed in charge of the Aviation Section of the Signal Corps, with the duty of "operating and maintaining or supervising the operation and maintenance of all military aircraft, . . . and of training officers, enlisted men, and candidates for aviation service in matters pertaining to military aviation;" and to that end there was transferred to his jurisdiction every function, power, and duty of the Chief Signal Officer in reference to such military aviation, as also all property and personnel used in connection with that service. (3) A Bureau of Aircraft Production was established as an executive agency to exercise complete jurisdiction and control over the production of aircraft and aircraft equipment, with the Chairman of the Aircraft Board (which had been created by the Act of October 1, 1917) as its executive officer. He was now designated the Director of Aircraft Production, and was to have complete charge of the activities, personnel, and properties of the said Bureau.⁴²

By another executive order of May 28, 1918, the War Industries Board, which had been originally formed as one of the advisory committees of the Council of National Defense,⁴³ was established as a separate administrative agency to act for the President and under his direction. The functions, duties, and powers of the board were by this order continued as they had been outlined by the President in his letter of March 4, 1918, to the chairman, Bernard M. Baruch;⁴⁴ and in its new capacity the War Industries Board became one of the most important factors in coördinating the industrial resources of the nation and thus contributing to the successful conclusion of the war.

The war having been won, President Wilson ordered the War Industries Board to be dissolved January 1, 1919, and certain of its functions transferred to other executive agencies. Thus the powers and functions of the Division of Planning and Statistics

⁴² Executive order of May 20, 1918. *Official Bulletin*, May 21, 1918.

⁴³ Under authority of the Army Appropriations Act of Aug. 29, 1916. *U. S. Stats.*, 64 Cong., 1 Sess., 619, 650.

⁴⁴ *Official Bulletin*, May 31, 1918. For the letter referred to as outlining the functions of the board, see *ibid.*, Mar. 31, 1918.

were transferred to the War Trade Board, as also the powers of the War Industries Board with respect to any orders, directions, regulations, or functions that could not, in the opinion of the chairman, be abrogated, complied with, or fulfilled by the 1st of January; while those of the Wool Division were transferred to the Bureau of Markets in the Department of Agriculture. The powers and functions of the Price Fixing Committee were ordered to continue until the prices fixed by the committee should have expired, whereupon all the papers and records should be delivered to the liquidating officer of the War Industries Board, and the committee should stand dissolved. The order further specified that the War Industries Board, or any number of its members and officials might be continued for a limited period after January 1st, if the chairman found that to be necessary for the proper performance of any duty entrusted to him or to the board, but only for the purpose of performing that duty and liquidating the affairs of the board.⁴⁵

Other particularly important orders issued under the Overman Act were those affecting the natural resources of the country. Thus, by executive order of July 3, 1918, the records, personnel, and powers of the Federal Trade Commission relating to the production and distribution of coal and coke were taken from that body and transferred to the Fuel Administration.⁴⁶ By another order of July 31, 1918, the President likewise placed the control of the petroleum supply in the hands of the Fuel Administrator, directing, however, that such control should be exercised through a Committee on Standardization of Petroleum Specifications, the composition of which was prescribed in the order.⁴⁷ Of a similar

⁴⁵ Executive order of Dec. 31, 1918. *Official U. S. Bulletin*, Jan. 29, 1919. While this executive order dissolving the War Industries Board was specifically based on the Overman Act, the order of May 28, 1918, establishing that board as an administrative agency contained no reference to that act or any other statute, tho that authority was evidently presumed. Another executive order apparently issued under authority of the Overman Act, but making no specific reference to it, was that of June 25, 1918, transferring the gas experiment station at American University (Washington, D. C.) from the jurisdiction of the Bureau of Mines to that of the War Department. *Official Bulletin*, June 28, 1918.

⁴⁶ *Ibid.*, July 10, 1918.

⁴⁷ *Ibid.*, Aug. 7, 1918. This committee was to be composed of 7 members, as follows: a chairman appointed by the Fuel Administrator, one

nature was a later order conferring the control of the mineral resources of the country upon the Secretary of the Interior.⁴⁸

Numerous other executive orders were issued under the authority of the Overman Act, transferring and coördinating various functions and services. On May 31st, all the law officers of the government were ordered to "exercise their functions under the supervision and control of the head of the Department of Justice," excepting only those officers in the Philippines, the Comptroller of the Treasury, and the Judge Advocates General of the Army and Navy;⁴⁹ on June 18th, the war housing activities were placed under the control of the Secretary of Labor;⁵⁰ and on July 1st, all the sanitary and public health services were concentrated under the supervision of the Secretary of the Treasury, excepting those health functions military in character, exercised by the Surgeons General of the Army and Navy and by the Provost Marshal General.⁵¹

Finally, to show the great variety in the actions taken under the Overman Act, mention may be made of the executive order of October 3, 1918, transferring \$120,000 from the appropriation of \$1,620,000 for the censorship of foreign mails under the Post Office Department, and allotting that amount to the Secretary of War for the censorship of the mails in the Panama Canal Zone;⁵² and of the executive order of October 22, 1918, by which the President transferred a single individual (W. F. Sloan, of the Division of Program and Statistics) from the Bureau of Aircraft Production to the Post Office Department for such duties as might be assigned to him by the Postmaster General in connection with the control and operation of the telegraph and telephone services.⁵³

The excellent results of the "blanket authority" thus conferred on the President with regard to administration in time of war,

member appointed by the Secretary of War, one by the Secretary of the Navy, one by the chairman of the Shipping Board, one by the Director General of Railroads, one by the Director of the Bureau of Mines, and one by the Director of the Bureau of Standards.

⁴⁸ *Official Bulletin*, Nov. 18, 1918.

⁴⁹ *Ibid.*, June 4, 1918.

⁵⁰ *Ibid.*, June 20, 1918.

⁵¹ *Ibid.*, July 2, 1918.

⁵² *Ibid.*, Oct. 10, 1918.

⁵³ *Ibid.*, Nov. 13, 1918.

may be considered to have set a precedent for the future, which will undoubtedly be followed in case of another emergency. As a result, therefore, of his duty to administer and enforce the laws, of his power to nominate, appoint, and dismiss the chief administrative officers, and of the administrative powers conferred by statute, it may fairly be said that the President, in time of war especially, "has become in effect the administrator-in-chief of the Government."⁵⁴

⁵⁴ Cf. Willoughby, *Government Organization in War Time and After*, 5-6.

CHAPTER XI

POWERS OF POLICE CONTROL

The Bill of Rights is generally considered the most sacred part of the Constitution, especially those portions of it guaranteeing freedom of speech, of the press, and of assembly; security from arbitrary arrest and deprivation of property; and a speedy trial by jury.¹ One of the most important, as well as one of the most perplexing questions that arise in time of war is that of the extent to which these ordinary civil rights of the individual may be restricted in the interest of the public safety and the national defense. Clearly the Constitution is not merely a peace instrument, but was intended to protect the individual in time of war as in time of peace. The doctrine of *inter armas leges silent* can have no place in a constitutional government;² nevertheless it must also be recognized that the guaranty of civil rights cannot apply in the same fashion, nor to the same extent, in time of war as under normal conditions.

One distinguished authority says that "war is a negation of

¹ *Amendments*, Arts. I, IV, V, VI.

² "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government." *Ex parte Milligan*, 4 Wall., 2, 120-121 (1866). However, a committee of the N. Y. Bar Association, at its meeting in Jan., 1917, reported as follows: "In time of war the laws are silent; during the war civil rights may be suspended at the will of the Commander-in-Chief. The Constitution does not inure to the benefit of the public enemy, of spies, or of enemy sympathizers." This position was severely criticized by Dean H. W. Ballantine, of the College of Law in the University of Illinois, in an article, "The Effect of War on Constitutional Liberty," in *Case and Comment*, XXIV, 3 (June, 1917).

civil rights," and holds that in its control over the life, liberty, and property of those whom it recognizes as public enemies, Congress is limited "only by the dictates of humanity and a respect for the practice of nations."³ Another writer contends that the amendments guaranteeing these rights were intended "as declarations of the rights of peaceful and loyal citizens, and safeguards in the administration of justice by the civil tribunals; but it was necessary, in order to give the government the means of defending itself against domestic or foreign enemies, to maintain its authority and dignity, and to enforce obedience to its laws, that it should have unlimited war powers; and it must not be forgotten that the same authority which provides those safeguards and guarantees those rights, also imposes upon the President and Congress the duty of so carrying on war as of necessity to supersede and hold in temporary suspense such civil rights as may prove inconsistent with the complete and effectual exercise of such war powers and of the belligerent rights resulting from them. . . . The rights enjoyed under the constitution in time of peace are different from those to which he is entitled in time of war."⁴

Even if we do not fully accept the contention of these writers that civil rights may be suspended in time of war, still it would seem to be apparent that at such a time these rights must be subject to some modification, restriction, or at least, very careful supervision, in order that the government may contend successfully with sedition and disloyalty from within as well as against the enemy without; the principle justifying this view being that the rights of the individual must yield to those of the state in the time of the state's peril from a public enemy.⁵ Hence there have been developed what may be called the police powers of the President in time of war, that is, the powers exercised by him in restraining and controlling the actions of individuals.

³ W. A. Dunning, in *Pol. Sci. Quar.*, I, 178.

⁴ Whiting, *War Powers under the Constitution*, 51. But in his dissenting opinion in the recent case of *Abrams v. United States*, Justice Holmes declared that the right of free speech is the same in war as in peace, saying, "It is only the present dangers of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned." 250 U. S., 616 (1919).

⁵ Cf. Glenn, *The Army and the Law*, 144.

whether they be citizens or aliens, within the limits of the country, during a period of war or similar emergency.

The relation of this war power to the rights of enemy aliens who are found within the country after the outbreak of a war is comparatively simple. International law from its very beginning recognized the right of a state to arrest such enemy aliens immediately upon the outbreak of war and detain them as captives during the period of hostilities. Later long-continued practice brought about the rule that a reasonable time for departure should be given before arrest, developing finally into the rule that such aliens should be permitted to remain during the entire period of the war, unless military considerations required their expulsion.⁶ The right to arrest or otherwise restrict and govern the conduct of enemy aliens, has, however, never been formally abandoned, and was indeed revived on a wholesale scale by each belligerent during the recent World War.

In the United States, the right of a state under international law thus to regulate and restrict the conduct and movements of enemy aliens has been definitely vested in the President. An act of Congress passed nearly a century and a quarter ago,⁷ designated as alien enemies all male natives, citizens, denizens, or subjects of a hostile nation or government, who were at least fourteen years of age and not actually naturalized; and in 1918 the scope of this act was enlarged so as to include women.⁸ The President, by virtue of these acts, is authorized to direct the conduct to be observed on the part of the United States towards these enemy aliens, the manner and degree of the restraint to which they shall be subject, and in what cases and upon what security their continued residence in the United States may be permitted; to provide for the removal of those who are not to be permitted to remain; and "to establish any other regulations which shall be found necessary in the premises for the public safety." In case of removal being ordered, the President is further authorized, at his discretion, to give such reasonable time for de-

⁶ Lawrence, *Principles of International Law*, 387-389; Hershey, *Essentials of International Public Law*, 362.

⁷ Act of July 6, 1798. *Annals of Cong.*, 5 Cong., III, App., 3753; *U. S. Rev. Stats.*, secs. 4067-4070.

⁸ Act of Apr. 16, 1918. *U. S. Stats.*, 65 Cong., 2 Sess., 531.

parture "as may be consistent with the public safety, and according to the dictates of humanity and national hospitality."

In other words, the President is, impliedly by the rules of international law and expressly by statute, vested with full power to restrict and control the conduct and movements of alien enemies as he may see fit. He may permit them to stay in the United States during the course of a war, with such restrictions upon their conduct as he may deem proper, or with no restrictions; he may order them to depart from the country, and if they refuse or neglect to go, may compel their removal; or he may arrest and intern them for the period of the war. His actions under these powers are final, and in no way subject to judicial review.⁹

Until recently little use seems to have been made of this power. During the war of 1812, aliens were ordered to report their names and obtain "certificates" once a month.¹⁰ Otherwise they have apparently been permitted to remain in the United States with no harrassing regulations governing their conduct and movements. During the recent war with Germany and Austria-Hungary, however, the magnitude of the struggle, involving as it did practically every resource and industry of the nation, and the great number of citizens or subjects of those countries resident in the United States, made the danger from such enemy aliens considerably more serious than ever before.

President Wilson, acting under the authority of the Act of 1798, therefore took precautionary measures immediately upon the entry of the United States into the war, and in the very same proclamation announcing the existence of a state of war,¹¹ he established a set of twelve regulations governing the conduct of such enemy aliens within the United States. Under these regulations, the possession by enemy aliens of any sort of fire-arm or signal apparatus was prohibited; a barred zone was created around every fort, arsenal, and other government property; attacks or threats of any sort against the government, its measures, policies, or personnel, were not allowed; their residence within any prohibited area that might be designated by the Presi-

⁹ Glenn, *The Army and the Law*, 87.

¹⁰ *Life and Works of John Adams*, X, 42.

¹¹ Proclamation of Apr. 6, 1917. *U. S. Stats.*, 65 Cong., 1 Sess., Procs., 6.

dent was not permitted; their departure from and entry into the United States was allowed only under such restrictions as the President might prescribe; hostile acts, or acts giving "information, aid, or comfort" to the enemy were of course forbidden; and they were subject, upon suspicion, to summary arrest and internment.

These regulations of April 6, were supplemented by eight additional regulations established in the proclamation of November 16, 1917,¹² which absolutely excluded enemy aliens from such regions as the territorial waters of the United States, the District of Columbia, and the Panama Canal Zone; required them to register; and ordered them to obey such restrictions and regulations upon their residence, occupation, and travel, as the Attorney General might make from time to time. Upon the declaration of war against Austria-Hungary, the scope of these regulations was extended to include the citizens and subjects of that country;¹³ and finally, to include the alien women of both Germany and Austria-Hungary.¹⁴

While the Act of July 6, 1798, supplemented by the Act of April 16, 1918, therefore conferred extensive powers of police control upon the President, there can be no question but that such powers are strictly in line with the accepted rules of international practise, and even without these statutes, might be said to have been vested in the President as the Chief Executive and as Commander-in-Chief.

Somewhat more doubtful are the powers conferred by the famous Alien Act of 1798,¹⁵ which was passed during the stress of the expected war with France and applied to all aliens, whether from an enemy or a friendly country. By the provisions of this act, the President was authorized to order out of the country "such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable ground to

¹² *U. S. Stats.*, 65 Cong., 1 Sess., Procs., 72.

¹³ Proclamation of Dec. 11, 1917. *Ibid.*, 2 Sess., 85.

¹⁴ Proclamation of Apr. 19, 1918. *Ibid.*, 128. On Christmas Day of 1918, these regulations were rescinded, in their entirety as extended to women, and also as applied to men, excepting only the restrictions as to departure from and entry into the United States. Proclamation of Dec. 23, 1918. *Ibid.*, 3 Sess., 274. This proclamation is unique in being done "at the city of Paris, in the Republic of France."

¹⁵ Act of June 25, 1798. *Annals of Cong.*, 5 Cong., III, App., 3744.

suspect are concerned in any treasonable or secret machinations against the Government thereof." A license to reside within the United States at any place designated by the President might be secured, if the alien concerned could prove, "to the satisfaction of the President," that he was not dangerous to the public safety; but any alien returning to the United States after his removal, unless by permission of the President, was to be imprisoned "so long as, in the opinion of the President, the public safety may require."

This measure thus gave the President practically unlimited police control over all aliens within the United States. Tho enacted during a time of technical peace, the Alien Act was designed (together with the Sedition Act) as a war measure, "to afford the President of the United States an effective weapon against what seemed an especially pernicious and dangerous form of domestic opposition in time of war."¹⁶ A great many of the recently admitted foreigners were extreme radicals who "expressed their opinions by speech or pen with a venomous facility that has few counterparts in these milder times," condemned every magistrate in power in the United States, and whose outpourings could not be looked upon as altogether harmless.¹⁷ There might even be said to have been a precedent for the Alien Act in a similar act passed in Virginia in 1785 and reenacted in 1792, but which, as Madison pointed out, differed in that the Virginia act expressly applied only to enemy aliens in time of actual war.¹⁸

The powers conferred by the Alien Act were upheld as a legitimate exercise of the war power, in the report of a House committee submitted February 21, 1799, as follows: "The right of removing aliens, as an incident to the power of war and peace, according to the theory of the Constitution, belongs to the government of the United States. . . Congress is required to

¹⁶ F. M. Anderson, in *Report, Am. Hist. Assn.* 1912, 115. "French spies then swarmed in our cities and in our country; some of them were intolerably impudent, turbulent, and seditious. To check them, was the design of the law." Adams to Jefferson, June 14, 1813. *Life and Works of John Adams*, X, 42. The limitation of the act to two years is also an indication that it was designed purely as a war measure.

¹⁷ Channing, *History of the United States*, IV, 220.

¹⁸ *Writings of James Madison*, VI, 369.

protect each state from invasion; and it is vested . . . with powers to make all laws which shall be proper to carry into effect all powers vested by the Constitution in the government of the United States, or in any department or officer thereof; and to remove from the country, in times of hostility, dangerous aliens, who may be employed in preparing the way for invasion, is a measure necessary for the purpose of preventing invasion, and, of course, a measure that Congress is empowered to adopt. . . Although the committee believe that each of the measures adopted by Congress [referring also to the Sedition Act] is susceptible of an analytical justification, on the principles of the Constitution and national policy, yet they prefer to rest their vindication on the true ground of considering them as parts of a general system of defense adapted to a crisis of extraordinary difficulty and danger."¹⁹ Even the bitterest critics of the Alien Act questioned its constitutionality only as it applied to friendly aliens, admitting frankly that "the removal of alien enemies is an incident to the power of war."²⁰

Apparently the power given to the President by the Alien Act was not actually exercised in a single instance;²¹ altho in a couple of cases final action by the President was probably forestalled only by the voluntary departure of the person concerned, and a considerable number of foreigners are said to have left the country, anticipating the enforcement of the act.²² On the whole, it is probably correct to say that this law was "neither unjustifiable in purpose nor administered with special harshness."²³

The power of the President to deal summarily with citizens whom he may consider dangerous to the public safety is not so clear. The provision in the Constitution permitting the suspension of the privilege of the writ of habeas corpus "when in

¹⁹ *Am. State Papers, Misc.*, I, 182, 183; *Elliot's Debates*, IV, 441.

²⁰ See Madison's famous Report of 1800 on the Virginia Resolutions. *Writings of James Madison*, VI, 366-367.

²¹ *Life and Works of John Adams*, X, 42. President Adams, in at least one instance, expressed a willingness to apply the act. *Ibid.*, IX, 5.

²² See article by F. M. Anderson, "The Enforcement of the Alien and Sedition Laws," in *Report, Am. Hist. Assn. 1912*, 115-126, esp. 116-117.

²³ Bascom, *Growth of Nationality in the United States*, 24. See also Channing, *op. cit.*, IV, 223-224.

cases of rebellion or invasion the public safety may require it,"²⁴ shows that the taking of extraordinary measures in cases of such emergency was clearly recognized as necessary and proper.²⁵ Altho the Constitution itself does not expressly state by what authority the privilege of the writ may be suspended, it had been the general opinion, up to the time of the Civil War, that Congress alone had the power to judge of the exigency requiring that action. This opinion had been induced, not only by the position of the habeas corpus clause in that part of the Constitution devoted to the legislative department,²⁶ but also by precedent,²⁷ by the practise under the Constitution,²⁸ and by the weight of authority.²⁹

²⁴ Art. I, Sec. 9, Cl. 2.

²⁵ There was some objection to this clause at the time. Thus Jefferson in a letter to Madison, July 31, 1788, protested as follows: "Why suspend Hab. Corp. in insurrections & rebellions? . . . If publick safety requires that the government should have a man imprisoned on less probable testimony in those than in other emergencies; let him be taken & tried, retaken & retried, while the necessity continues, only giving him redress against the government for damages. Examine the history of England. See how few of the cases of the suspension of the Habeas Corpus law have been worthy of that suspension. They have been either real treasons wherein the parties might as well have been charged at once, or sham plots where it was shameful they should ever have been suspected. Yet for the few cases wherein the suspension of the hab. corp. has done real good, that operation is now become habitual, & the minds of the nation almost prepared to live under its constant suspension." *Writings of Thomas Jefferson*, V, 46-47.

²⁶ In the state ratifying conventions it was taken for granted that Congress alone could suspend the writ. The following amendment, for example, was proposed by the New York convention of 1788: "That the privilege of the habeas corpus shall not, by any law, be suspended for a longer term than six months, or until twenty days after the meeting of the Congress next following the passing of the act for such suspension." *Elliot's Debates*, I, 330.

²⁷ In England, Parliament, not the Crown, suspends the writ.

²⁸ President Jefferson's message of Jan. 22, 1807, on Burr's conspiracy, was followed by the passage in the Senate of a bill suspending the writ of habeas corpus in certain cases for three months. In the House the bill was rejected by an overwhelming majority. Neither in the message of the President nor in the discussion in Congress was there any suggestion of the President's right to exercise that power. *Annals of Cong.*, 9 Cong., 2 Sess., 39-43, 44, 402-425.

²⁹ *Ex parte Bollman*, 4 Cr., 75, 101 (1807); Story, *Commentaries on*

With the outbreak of the Civil War, this settled opinion was disregarded by President Lincoln, acting on his own initiative or through his subordinates, and upon the advice of his Attorney General.³⁰ On April 27, 1861, he authorized General Scott to suspend the writ of habeas corpus by the following order: "You are engaged in suppressing an insurrection against the laws of the United States. If at any point on or in the vicinity of any military line which is now or which shall be used between the city of Philadelphia and the city of Washington, you find resistance which renders it necessary to suspend the writ of habeas corpus for the public safety, you personally, or through the officer in command at the point at which resistance occurs, are authorized to suspend that writ."³¹

On May 10, the President by proclamation also authorized the commander of the United States forces on the coast of Florida, "if he shall find it necessary, to suspend the writ of habeas corpus and to remove from the vicinity of the United States fortresses all dangerous or suspected persons;"³² on June 20, he directed General Scott to suspend the writ in the case of a single officer charged with treason;³³ on July 2 and October 14, he extended his order of April 27 to cover the military line from Washington to Bangor, Maine;³⁴ and on December 2, he empowered General Halleck to suspend the writ at his discretion in the state of Missouri.³⁵ Finally, by proclamation of September 24, 1862,³⁶ the President declared that all persons aiding or abetting the rebellion, discouraging enlistments, resisting drafts, or guilty of "disloyal practices," should be subject to trial by court-martial or military commission, and ordered the suspension of the writ of habeas corpus in their cases — a proclamation which

the Constitution, II, 208. Cf. Chambrun, *The Executive Power*, 241; Winthrop, *Abridgment of Military Law* (2nd ed.), 330-331.

³⁰ Attorney General Bates, July 5, 1861. 10 *Op. Atty. Gen.*, 74.

³¹ Richardson, *Messages and Papers of the Presidents*, VI, 18. Only two days before, Lincoln declined to permit Gen. Scott to arrest or disperse members of the Maryland legislature suspected of favoring secession, before the legislature should meet. *Ibid.*, 17.

³² *Ibid.*, 17.

³³ *Ibid.*, 19.

³⁴ *Ibid.*, 19, 39.

³⁵ *Ibid.*, 99.

³⁶ *Ibid.*, 98-99.

an eminent authority has characterized as "a perfect platform for a military despotism."³⁷

While the suspension of the privilege of the writ of habeas corpus does not of itself authorize arbitrary arrests or any unusual procedure in trial, it has that practical effect, since those suffering arbitrary arrest would have no remedy to prevent the continuance of their confinement during the suspension of the writ.³⁸ Arbitrary arrests were made from the very beginning of the war. Members of the Maryland legislature, the mayor of Baltimore, and several other prominent citizens were arrested by order of the Secretary of War, in order to prevent the passage of an ordinance of secession. Later, wholesale arrests were made all over the country, especially in the West, some by direct authority of the President,³⁹ some by order of the Secretary of State, some by that of the Secretary of War, sometimes merely by virtue of a simple telegram, and in no case with the warrant required by the Constitution, the only justification being that the persons so arrested were, by treasonable speaking and writing, giving aid and comfort to the enemy, and that their imprisonment was necessary for the public safety.⁴⁰

In March, 1863, Congress expressly authorized the President to suspend the writ of habeas corpus and legalized his past

³⁷ W. A. Dunning, in *Pol. Sci. Quar.*, I, 188. "Discouraging enlistments and disloyal practices were offences unknown to the law, and the phrase disloyal practice was large enough to include anything." S. G. Fisher, in *Pol. Sci. Quar.*, III, 457. The elastic interpretation of the latter term is indicated by the following contemporary definition: "He is a public enemy who seeks falsely to exalt the motives, character, and capacity of armed traitors, to magnify their resources, to encourage their efforts by sowing dissension at home, or by inviting intervention of foreign powers in our affairs. He who overrates the success, increases the confidence, and encourages the hopes of our adversaries, or under-rates, diminishes, or weakens our own, and he who seeks false causes of complaint against the officers of our government, or inflames party spirit among ourselves, . . . gives to our enemies that moral support which is more valuable to them than regiments of soldiers, or millions of dollars." Whiting, *War Powers under the Constitution*, 197-198.

³⁸ Cf. Burgess, *The Civil War and the Constitution*, II, 216.

³⁹ See Executive order of Aug. 8, 1862. Richardson, *op. cit.*, VI, 121.

⁴⁰ Rhodes, *History of the United States*, III, 553-556; S. G. Fisher, "The Suspension of Habeas Corpus during the War of the Rebellion," in *Pol. Sci. Quar.*, III, 454-488, esp. 457.

acts,⁴¹ but for two years Lincoln had suspended the writ of his own accord, and had made arrests without warrant, holding the suspects as long as he pleased,⁴² not only without express authority and contrary to the prevailing opinion of his power up to the time of the Civil War, but in direct opposition to the authoritative ruling of Chief Justice Taney.⁴³ He was, however, clearly supported by public opinion,⁴⁴ and if any constitutional principle can be deduced, it is "that the President may in an emergency exercise the right to arrest and detain individuals until Congress acts."⁴⁵ There is scarcely any doubt, as is asserted by an eminent authority, that the practices of the administration in the Civil War would be repeated under like circumstances, and that they are to be considered as the precedents of the Constitution rather than the opinion of the Supreme Court.⁴⁶

With regard to the freedom of speech and press, some restrictions on both have always been considered warranted in spite of the constitutional guaranties, even in time of peace.⁴⁷ In time

⁴¹ Act of Mar. 3, 1863. 12 *Stat. at L.*, 755.

⁴² By executive order of Feb. 14, 1862, he ordered the release of all political prisoners on their parole to render no aid or comfort to the enemies of the United States, granting amnesty for their past disloyalty to those who should keep their parole, and declaring that "extraordinary arrests will hereafter be made under the direction of the military authorities alone." Richardson, *op. cit.*, VI, 102-104.

⁴³ *Ex parte Merryman*, Fed. Cases No. 9487 (1861).

⁴⁴ Cf. S. G. Fisher, *op. cit.*, 483.

⁴⁵ See W. A. Dunning, "The Constitution in Civil War," in *Pol. Sci. Quar.*, I, 163-198, esp. 189; cf. Bascom, *Growth of Nationality*, 112-114. The most notable assertion of the President's power was the pamphlet by Horace Binney, "The Privilege of the Writ of Habeas Corpus under the Constitution," well summarized by S. G. Fisher, *op. cit.*, 459-465. For Lincoln's own defense of his actions, see his message to Congress, July 4, 1861, and his replies to communications from New York and Ohio Democrats, June 12 and June 29, 1863. Richardson, *op. cit.*, VI, 25; McPherson, *History of the Rebellion*, 163-167, 170-172.

⁴⁶ "It may therefore be claimed that it is the precedent of the Constitution in Civil War that the President may suspend all the safeguards of the Constitution in behalf of personal liberty anywhere within the country, taking upon himself the responsibility therefor to Congress, and that subsequent authorization by Congress to do the like things in future works indemnification, and makes the preceding Presidential assumptions legitimate and lawful, if they lacked anything of being so before." Burgess, *The Civil War and the Constitution*, II, 217.

⁴⁷ "What is the liberty of the press? Who can give it any definition

of war, these may be considerably extended so as to prevent interference with the successful prosecution of the war by stirring up disloyalty or sedition, by encouraging disobedience to the laws, or by giving aid or comfort to the enemy in any way.⁴⁸ In fact, it has been officially asserted that the freedom of the press in war time rests largely with the discretion of Congress.⁴⁹

Such war time restrictions may take the form of penalizing certain kinds of speech or writing. This was the nature of the famous Sedition Act of 1798,⁵⁰ which, designed, like the Alien Act already referred to, as a war measure,⁵¹ attempted to curb the spread of sedition during the crisis with France by punishing false, scandalous, and malicious writings against the Government, either house of Congress, or the President, written with intent to stir up sedition. Of a similar nature, but even more clearly designed as a war measure, is the Espionage Act of 1917,⁵² of which it has been said that "few more sweeping measures have ever found their way to the national statute book."⁵³

which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this, I infer that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion and on the general spirit of the people and of the government." *The Federalist*, No. 84 (Goldwin Smith ed., p. 476).

⁴⁸ In its decisions upholding the constitutionality of the Espionage Act of 1917, the Supreme Court declared that the first amendment affords no protection to an individual convicted under that act for printing and distributing in time of war a document calculated to cause insubordination in the military and naval forces and obstruction to recruiting; that it likewise is no protection against conviction for publishing and circulating newspapers or articles attempting to cause disloyalty and mutiny; and that it is no valid defense against conviction for delivering a speech opposing the war, so expressed that the natural effect is to obstruct recruiting. *Schenck v. United States*, 249 U. S., 47 (1919); *Frohwerk v. United States*, *ibid.*, 204; *Debs v. United States*, *ibid.*, 211.

⁴⁹ *War Cyclopedia* (1st ed.), 101.

⁵⁰ Act of July 14, 1798. *Annals of Cong.*, 5 Cong., III, App., 3776.

⁵¹ See report of House Committee, Feb. 21, 1799. *Am. State Papers*, Misc., I, 182, 183. That the act was designed purely as an emergency measure is further indicated by the fact that it was to continue in effect only until Mar. 3, 1801.

⁵² Act of June 15, 1917. Public No. 24, 65 Cong., in Wigmore, *Source-Book of Military Law and War-Time Legislation*, 484-500.

⁵³ *War Cyclopedia* (1st ed.), 88.

As amended in 1918,⁵⁴ this act is especially stringent, making it a penal offense, not only to hinder the success of the United States and promote that of the enemy by making false reports, by inciting or attempting to incite disloyalty or mutiny, or by obstructing recruiting and enlistment, but also to "willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government . . . , or the Constitution . . . , or the military or naval forces . . . , or the flag . . . , or the uniform of the Army and Navy of the United States," or any language intended to bring these into "contempt, scorn, contumely, or disrespect." Through his constitutional power to "take care that the laws be faithfully executed," it was of course largely within the discretion of the President to interpret these provisions in such a way as to make them instruments of oppression or genuine attempts to suppress disloyalty and sedition.⁵⁵

Another method of placing war time restrictions on the press is through censorship in advance of publication. This method is largely executive. The President, as Commander-in-Chief, has the undoubted power to suppress or censor such newspapers or other publications in occupied territory as he may deem injurious to the public interests.⁵⁶ At least one writer asserts that the President also has this power within the United States as well. He says that the power necessarily exists somewhere to prevent disclosures useful to the enemy, should such disclosures be threatened or undertaken, and maintains that "it is of the very essence of all things which lie between success and failure in war that this power should be reposed where it can be exercised instantly, as the exigencies of the situation may develop the need," and that therefore the President is not dependent upon Congress in order to exercise the power of censorship, but has the right, as Commander-in-Chief, to prevent and suppress such publications.

⁵⁴ Act of May 16, 1918. Public No. 150, 65 Cong., in Wigmore, *op. cit.*, 500-501.

⁵⁵ For a vigorous criticism of these Espionage Acts and the manner of their enforcement, as well as for a complete discussion of the subject of the freedom of speech in war time, see Chaffee, *Freedom of Speech*, esp. chs. 1-2. For the enforcement of the Sedition Act of 1798, see F. M. Anderson, *op. cit.*, in *Report, Am. Hist. Assn. 1912*, 118-122. For opinion as to its constitutionality, see Story, *Commentaries on the Constitution*, II, 619, n.

⁵⁶ *Dig. Ops. J. A. G.*, (ed. 1901), 426.

"To deny the power is to deny the right of the commander-in-chief to protect his armies against a danger as obvious as would be the danger of allowing armies to organize and drill and accumulate arms and ammunition behind the lines."⁵⁷

This power of censorship was both asserted and exercised during the Civil War. Postmaster General Blair stated it as his opinion "that a power and duty to prevent hostile printed matter from reaching the enemy, and to prevent such matter from instigating others to coöperate with the enemy, by the aid of the United States mails, exist in time of war, and in the presence of treasonable and armed enemies of the United States, which do not exist in time of peace, and in the absence of criminal organizations;"⁵⁸ which view was sustained in a report of a committee of Congress,⁵⁹ and a way thus opened for placing the press "at the mercy of the Government in time of war."

In accordance with these views, a censorship of some sort existed from the outset of the war, tho it was apparently never very effective. Government control of the telegraph lines was established as early as April, 1861, and a censor (H. E. Thayer) was appointed, with instructions from Secretary Seward to prevent the issue from Washington of telegraphic messages relating to the civil or military operations of the government, containing anything more than a bare statement of essential facts.⁶⁰ In August of the same year, an attempt was made to reach a "gentlemen's agreement" between the government and the press, whereby the newspapers were to refrain from publishing information giving aid or comfort to the enemy, while the government was to afford facilities for the transmission of suitable information.

This proved to be a failure, due to the unscrupulous character of some correspondents and newspapers, and finally resort was had to an administrative policy of news control. The censoring

⁵⁷ T. J. O'Donnell, "Military Censorship and the Freedom of the Press," in *Va. Law Rev.*, V, 178-179.

⁵⁸ Quoted in Burgess, *op. cit.*, II, 222-223.

⁵⁹ Report of House Judiciary Committee, Jan. 20, 1863. *Ibid.*, 223.

⁶⁰ For example, no mention was permitted of the criticism of Gen. Stone for the Ball's Bluff disaster; nor of the fact that some senators had urged the removal of Gen. Sherman; nor of the Cabinet's objections to Secretary Cameron's report. See J. G. Randall, "The Newspaper Problem in Its Bearing upon Military Secrecy during the Civil War," in *Am. Hist. Rev.*, XXIII, 303-323, esp. 303-304 (Jan., 1918).

function was transferred from the State to the War Department; military supervision of the telegraph lines was ordered by authority of Congress, beginning in February, 1862; and a special officer was appointed for the general supervision of the telegraph business, with the title of Assistant Secretary of War and General Manager of Military Telegraphs.⁶¹ Under the direction of this officer, regulations were drawn up governing the transmission of news over the telegraph wires,⁶² and a general policy of news control was instituted, tho the fact that the mails remained open and uncensored made these but half-way measures towards effectively closing the news channels.

There were also some attempts at suppression of newspapers and discipline of correspondents. In August, 1861, Postmaster General Blair ordered certain New York and Brooklyn papers excluded from the mails, and the United States marshal seized copies of one of them — these papers having been indicted for rebellious utterances;⁶³ the *Baltimore Transcript*, the *Metropolitan Record*, and the *Cincinnati Enquirer* were each suppressed for short periods by generals commanding in the departments in which they circulated; while the *New York World* and the *Journal of Commerce* were seized and suppressed for three days in May, 1864, under orders of President Lincoln, for publishing a bogus proclamation implying the admission of a Union disaster. The editor of the *Baltimore Exchange*, openly sympathetic with secession, was arrested and confined in Fort La Fayette, but released after some months by order of the War Department; the *Chicago Times* was suppressed in 1863 by General Burnside, but his action was revoked by the President. Several of the generals, particularly Grant and Sherman, attempted at various times

⁶¹ See order of Feb. 25, 1862, taking possession of the telegraph lines and naming Edward S. Sanford as military supervisor of telegraphic messages. The same order specifically forbade telegraphic communications concerning military operations not expressly authorized by the War Department, the commanding general, or the generals commanding in the several departments; newspapers publishing such military news without authority to be excluded from the telegraph service and from the railroads. Richardson, *op. cit.*, VI, 108-109.

⁶² For these regulations, see J. G. Randall, *op. cit.*, 305.

⁶³ These were the *Journal of Commerce*, the *Daily News*, the *Freeman's Journal*, and the *Brooklyn Eagle*. Burgess, *op. cit.*, II, 222; *Cong. Record*, 65 Cong., 2 Sess. (Feb. 19, 1918), 2557.

to discipline newspaper correspondents within their lines with varying degrees of success.⁶⁴

While the actual governmental interference with the freedom of the press during the Civil War was, on the whole, comparatively slight,⁶⁵ the precedent was established that "this part of the Constitution [the first amendment] may be suspended by order of the Administration, when in the judgment of the President the public safety demands it."⁶⁶

With the entry of the United States into the recent world war, the problem of news control again became acute, and on April 13, 1917, Secretary of State Lansing, Secretary of War Baker, and Secretary of the Navy Daniels addressed a joint communication to the President, setting forth their views on the subject. They pointed out the danger in premature or ill-advised announcements of policies, plans, and specific activities, and suggested the need for some authoritative agency to assume the publication of all the vital facts of national defense. "While there is much that is properly secret in connection with the departments of the Government, the total is small compared to the vast amount of information that it is right and proper for the people to have. . . . It is our opinion that the two functions — censorship and publicity — can be joined in honesty and with profit, and we recommend the creation of a Committee on Public Information. . . . We believe you have the undoubted authority to create this Committee on Public Information without waiting for further legislation, and because of the importance of the task, and its pressing necessity, we trust that you will see fit to do so. The committee, upon appointment, can proceed to the framing of regulations and the creation of machinery that will safeguard all information of value to an enemy, and at the same time open every department of government to the inspection of the people as far as possible."⁶⁷

In accordance with this recommendation and this opinion as to his powers with regard to censorship, President Wilson, by executive order of April 14, 1917,⁶⁸ created such a Committee on

⁶⁴ *Cong. Record*, 65 Cong., 2 Sess. (Feb. 19, 1918), 2557; J. G. Randall, *op. cit.*, 318-321.

⁶⁵ J. G. Randall, *op. cit.*, 322-323.

⁶⁶ Burgess, *op. cit.*, II, 223.

⁶⁷ See text of letter in *Official Bulletin*, May 10, 1917.

⁶⁸ *Official Bulletin*, May 10, 1917.

Public Information, "to be composed of the Secretary of State, the Secretary of War, the Secretary of the Navy, and a civilian who shall be charged with the executive direction of the committee." George Creel was appointed as the civilian chairman, and the Secretaries were authorized to detail an officer or officers to the work of the committee.

Under the direction of the committee so created, a system of voluntary censorship was established. The committee at various times issued "requests" to the press to suppress news with respect to certain matters of military and naval value.⁶⁹ These were supplemented from time to time by similar "requests" to the press from the Secretary of War and the Secretary of the Navy,⁷⁰ to all of which the press of the country apparently responded to the general satisfaction of the government officials.⁷¹

In addition to its direction of this voluntary censorship, the policy of news control was further carried out by the Committee on Public Information through its organization of various kinds of publicity services. A daily paper was published, beginning May 10, 1917, in no sense in competition with the regular news journals, but containing "all proclamations and Executive orders issued by the President; rules and regulations promulgated by the Federal departments; official bulletins and statements; statutes bearing on the war and their construction; and all other subjects related to the prosecution of the war, to which publicity may properly be given."⁷² Other pamphlets

⁶⁹ Especially information concerning the train and boat movements of troops, the assembling of transports and convoys, or any information from which inference might be drawn of embarkation for over-seas service. The suppression of the names of armed merchant ships which had engaged U-boats was also requested, in order to save the captains, if later captured, from the fate of Capt. Fryatt. *Official Bulletin*, June 14, June 15, 1917; May 10, June 10, 1918. On July 30, 1917, the committee published an extended list of matters concerning which it requested secrecy, which list was revised and again strongly urged upon the press on Dec. 31, 1917. *Ibid.*, July 31, Dec. 31, 1917.

⁷⁰ *Ibid.*, Apr. 3, May 27, Aug. 2, 1918.

⁷¹ See statements of Secretary Daniels praising the spirit of the American press in adhering to the voluntary censorship. *Ibid.*, Feb. 12, Aug. 2, 1918.

⁷² See statement in first number, May 10, 1917. The paper was named the *Official Bulletin*, later changed to *Official U. S. Bulletin*. It was suspended as a government publication Mar. 31, 1919, but was continued as a

were compiled and issued under the direction of this committee, giving information as to the causes and purposes of the war;⁷³ news was gathered and disseminated to the newspapers of the country; motion pictures were made and distributed under its supervision; staffs of lecturers were organized; and agencies of various sorts were used to stimulate public opinion and spread information on the issues of the war. All this was done on the sole authority of the President, the committee even operating for a considerable time on the executive budget, but later securing some appropriations from Congress.⁷⁴

Besides this system of voluntary censorship and news control under the direction of the Committee on Public Information, a rigid censorship of letters and other matter sent out from the camps and fields was maintained by the military authorities. In January, 1918, this censorship was by General Order lightened so as to permit soldiers in camp in this country to write freely for publication, subject to censorship by designated officers who were to "delete all references capable of furnishing important information to the enemy." Attention was, however, called to the fact that "criticism of superiors and the spreading of false reports which would tend to injure the military service constitute breaches of military discipline." Matter written by regular newspaper correspondents not in the military service was not subject to any sort of censorship, but the order directed camp commanders to instruct these correspondents "that they must rigidly adhere to the requests for secrecy with respect to information of value to the enemy, as defined . . . by the Commit-

tee, private enterprise, under the name *United States Bulletin*, published bi-weekly by Roger W. Babson.

⁷³ The so-called *War Information* and *Red, White, and Blue* series.

⁷⁴ The work and organization of the Committee on Public Information are outlined in Willoughby, *Government Organization in War Time and After*, 35-39; also in a pamphlet compiled under the direction of H. H. B. Meyer, Chief Bibliographer of the Library of Congress, *The United States at War; Organizations and Literature*, 79-81. According to a statement by Mr. Creel, the committee received from the President \$5,600,000, while from Congress it received but \$1,250,000. *N. Y. Times*, Nov. 1, 1919. There was much severe criticism of the Committee on Public Information and especially of its chairman, both during and since the war; but for a vigorous defense of its work, see Creel, *How We Advertised America*, New York, 1920.

tee on Public Information," violations of these instructions to cause a denial of the privileges of the camp.⁷⁵

In addition to the voluntary and military censorship of newspapers and other publications thus established within the United States on the sole authority of the President, steps were taken early in the war to establish a rigid censorship over the telephone, telegraph, and cable systems. By executive order of April 28, 1917, President Wilson prohibited all companies operating telegraph and telephone lines and submarine cables from transmitting messages to points without the United States and from delivering messages received from such points, except such messages as might be permitted under regulations established by the Secretary of War and the Secretary of the Navy.⁷⁶ This sweeping order was based on no other authority than the power vested in the President "under the Constitution and by the joint resolution of April 6, 1917, declaring the existence of a state of war;" in other words, solely upon his authority as Commander-in-Chief.

Under this order, a particularly stringent cable censorship was established. The office of Director of Naval Communications and Chief Cable Censor was created, under whose direction a number of cable censorship regulations were issued May 1, and amended May 31, 1917, with the avowed intention "to ease the situation of the American trader and correspondent abroad, consistent with the objects of military censorship."⁷⁷ On July 18, the censorship was extended to all Atlantic cables, and new regulations were promulgated, effective on that date.⁷⁸

Thus far the censorship was carried on solely by virtue of the President's orders. However, the Trading with the Enemy Act of October 6, 1917,⁷⁹ included among its provisions one authorizing the President to cause all communications to and from foreign countries by mail, cable, radio, or any other means, to be censored under such rules and regulations as he might establish.⁸⁰

⁷⁵ *Official Bulletin*, Jan. 31, 1918.

⁷⁶ *Ibid.*, July 18, 1917. This order was supplemented by a similar order of Sept. 26, 1918, extending the restrictions to messages on or near the Mexican border. *Ibid.*, Sept. 27, 1918.

⁷⁷ *Ibid.*, June 5, 1917.

⁷⁸ *Ibid.*, July 18, July 25, 1917. Up to that time, the cable censorship had extended only to South and Central America, Mexico, and the Orient.

⁷⁹ Public No. 91, 65 Cong., in Wigmore, *op. cit.*, 543-561.

⁸⁰ Sec. 3, Cl. (d).

President Wilson thereupon, by executive order based upon this act, created a Censorship Board, composed of representatives of the Secretaries of War and Navy, the Postmaster General, the War Trade Board, and the chairman of the Committee on Public Information, to control all such communications.⁸¹

Under the direction of this board, the cable censorship was tightened, and a great many persons, including some American citizens, were denied the use of the cables altogether.⁸² The work of the chief cable censor was still continued, however, new regulations being issued by him in the spring of 1918.⁸³ The censorship thus exercised seemed to be based in part on statutory authority, but chiefly on the authority of the President alone, acting in pursuance of his powers as Commander-in-Chief.

In addition to giving the President complete power to censor all communications of every sort between this country and a foreign country, the Trading with the Enemy Act vested him with considerable power over the foreign language press of the United States, requiring these newspapers, except by license from the President, to file before publication a "true and complete" translation of "any news item, editorial, or other printed matter, respecting the Government of the United States, or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war, or any matter relating thereto."⁸⁴ Provisions of the Espionage Act had likewise declared non-mailable every sort of publication "containing any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States."⁸⁵

To the executive authorities charged with the enforcement of these provisions was left the exact determination of what was to constitute such non-mailable matter, and Postmaster General Burleson, in a public statement, defined the position of the Administration as follows: "We shall take care not to let criticism which is personally or politically offensive to the administration

⁸¹ Executive order of Oct. 12, 1917. *Official Bulletin*, Oct. 15, 1917.

⁸² See *N. Y. Times*, Nov. 9, 1917.

⁸³ *Official Bulletin*, May 21, 1918. The cable censorship ceased July 23, 1919, by order of the President. *N. Y. Times Current Hist. Mag.*, X, 410 (Sept., 1919).

⁸⁴ Sec. 19.

⁸⁵ Act of June 15, 1917 (Title XII, Sec. 2).

affect our action. But if newspapers go so far as to impugn the motives of the Government and thus encourage insubordination, they will be dealt with severely. For instance, papers may not say that the Government is controlled by Wall Street or munition manufacturers, or any other special interests. Publication of any news calculated to urge the people to violate law would be considered grounds for drastic action. We will not tolerate campaigns against conscription, enlistments, sale of securities, or revenue collections. We will not permit the publication or circulation of anything hampering the war's prosecution or attacking improperly our allies."⁸⁶

The President's powers of censorship appear therefore to be based in part on his constitutional position as Chief Executive and Commander-in-Chief, in part on definite statutory authority. Through his power to interpret and enforce the statute law, the President is enabled to exercise a considerable measure of control over the expression of opinion in time of war. When to this is added the powers of censorship and control exercised by the authority of the President alone, not only during the recent war but previously as well, the President's power in this regard would seem to be limited in practise only by the extent of the necessity, as judged by him.

⁸⁶ Statement of Oct. 9, 1917, quoted in *War Cyclopedia* (1st ed.), 163. This was supplemented by another statement to the same effect, issued in a letter of Oct. 22, 1917. See text in Willoughby, *Government Organization in War Time and After*, 48-49.

CHAPTER XII

POWERS OF ECONOMIC CONTROL

"This is a war of resources no less than of men, perhaps even more than of men," said President Wilson during the course of the recent war;¹ and the extent to which the economic resources of the belligerent nations were placed under government control is one of the most striking and unprecedented features of the World War.

In the United States, it has become a well-established principle of constitutional law that businesses affected with a public interest are subject to government regulation, even in time of peace.² It has likewise been long recognized that the property rights of private individuals must yield in time of war to the military needs of the nation. Thus, during the Revolution, dictatorial powers were at various times conferred upon General Washington "to take, wherever he may be, whatever he may want for the use of the army, if the inhabitants will not sell it, allowing a reasonable price for the same."³ There was some attempt at price-fixing during the same war,⁴ and there were many resolu-

¹ Statement on taking over the railroads, Dec. 26, 1917. *Official Bulletin*, Dec. 27, 1917.

² *German Alliance Insurance Company v. Lewis*, 233 U. S., 389, 411 (1914).

³ Resolve of Dec. 27, 1776. See also resolves of Sept. 17 and Nov. 14, 1777. *Jour. Cont. Cong.*, VI, 1045; VIII, 752; IX, 905.

⁴ A resolution of Nov. 22, 1777, recommended that the states enact price-fixing legislation, "in order to introduce immediate economy in the public expense, the spirit of sharpening and extortion, and the rapid and excessive rise of every commodity being confined within no bounds;" and a resolution of Jan. 15, 1778, empowered the Board of War to limit the prices to be given for wheat and flour. The repeal of all such price-fixing legislation was recommended June 4, 1778, the resolution declaring that "it hath been found by Experience that Limitations upon the Prices of Commodities are not only ineffectual for the Purposes proposed, but like-

tions recommending and authorizing the "impressment" of supplies of all kinds needed for the army, including "wheat in the sheaf."⁵

The entry of the United States into the World War, requiring the mobilization, not only of the military and naval forces of the nation, but of its every economic resource as well, emphasized the fact that in time of war the constitutional principle of government regulation and control may be extended to cover practically every enterprise and activity within the country; that "the extraordinary circumstances of war may bring particular businesses and enterprises clearly into the category of those which are affected with a public interest and which demand immediate and thoroughgoing public regulation."⁶

Control of Food and Fuel. From the first, it was recognized that the great contribution of the United States to the winning of the war must be the supplying of food for itself and the Allies. Hence a policy of food control was entered upon, centered almost entirely in the hands of the President. Immediately after the declaration of a state of war with Germany, Herbert Hoover was selected (on April 7) by the Council of National Defense as chairman of its committee on food supply and prices,⁷ and on May 19 his appointment as Food Administrator and a program of food administration were announced by President Wilson,⁸ even tho the administration bills vesting the President with powers of food and fuel control had not yet been acted upon by Congress.⁹ President Wilson followed this action with a letter to Mr. Hoover on June 12, 1917, in which he stated that the saving of food and the elimination of waste admitted of no further delay, and therefore, without waiting for the legislation which he considered desirable, he vested Mr. Hoover with "full authority to undertake any steps necessary" for the proper organization wise productive of very evil Consequences to the great Detriment of the public Service and grievous Oppression of Individuals." *Ibid.*, IX, 957; X, 55; XI, 569, 570.

⁵ *Ibid.*, III, 323; VI, 1001; VIII, 741; IX, 774-775, 962, 1043; XX, 516, 598.

⁶ Statement of ex-Judge Hughes, quoted in *War Cyclopedia* (1st ed.), 96.

⁷ *Pol. Sci. Quar.*, XXXII, Supp., 25.

⁸ *N. Y. Times*, May 20, 1917.

⁹ These administration bills were introduced into Congress the latter part of April.

and stimulation of efforts along these lines.¹⁰ Accordingly, conservation campaigns were organized throughout the country, voluntary workers were enrolled, and a set of food rules were promulgated and issued,¹¹ all on the authority of the President alone.

Finally, in August, 1917, Congress passed the Food and Fuel Control Act,¹² vesting the President with complete control over the food and fuel resources of the nation. He was empowered, whenever he should deem it essential, to license the importation, exportation, manufacture, storage, and distribution of food, feed, fertilizer, and fuel, and to prescribe regulations governing the businesses so licensed; to fix prices of such food and fuel; to requisition such food, fuel, and other supplies, or factories or mines in which these are produced, "whenever he shall find it necessary;" to buy and sell wheat, flour, meal, beans, and potatoes, at prices to be fixed by him; to set a minimum guaranteed price for wheat (to be not less than \$2 per bushel); to regulate the operations of boards of trade; to limit, regulate, or prohibit the use of foodstuffs in the production of beverages, whether alcoholic or non-alcoholic; and, finally, "to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this Act."

Under authority of these provisions, President Wilson on August 10, 1917 (the day of the passage of the act), again formally announced the appointment of Herbert Hoover as Food Administrator¹³ (altho Mr. Hoover had been acting as such by executive authority since May 19), and turned over to him the immediate administration of the act. Steps were also taken at once to exercise the powers conferred by the act and to place the food resources of the country under a more thoro system of control. Through a series of proclamations, the President required licenses of practically every sort of business connected with the production and distribution of food, including elevators and

¹⁰*Official Bulletin*, June 18, 1917. For statement by Mr. Hoover concerning the aims of the Food Administration, see *ibid.*, June 20, 1917.

¹¹*Ibid.*, July 7, 1917. These were as yet, however, only for voluntary observance.

¹² Act of Aug. 10, 1917. Public No. 41, 65 Cong., in Wigmore, *Source-Book of Military Law and War-Time Legislation*, 504-516.

¹³ *Official Bulletin*, Aug. 11, 1917.

mills for the storage or distribution of wheat and rye; the importation, manufacture, and refining of sugar, sirups, and molasses; the importation, manufacture, storage, and distribution of more than twenty staple foods; the dealing in bread, bakery products, and green coffee; the arsenic, ammonia, and fertilizer industries; the trading in farm equipment; stockyards and connected businesses.¹⁴

Besides inaugurating this system of regulation through licensing, the President empowered the Food Administrator to limit profits,¹⁵ and to requisition such foods and feeds, with their storage facilities, as he might deem necessary "for any public use connected with the common defense, other than the support of the Army or the maintenance of the Navy."¹⁶ He guaranteed a minimum price for the wheat crops of 1918 and 1919,¹⁷ and ordered the organization of a Grain Corporation to purchase, store, and sell this wheat, and make the guarantee effective.¹⁸ He limited the alcoholic content of malt and vinous liquors to 2.75 per cent, and finally brought about total prohibition by forbidding the use of any foodstuffs in the production of such malt liquors, whether alcoholic or non-alcoholic.¹⁹

Altho most of these war-time restrictions were removed within a few months after the signing of the armistice,²⁰ some of them were again revived and enforced about a year after that event, when the powers of the Food Administration were transferred

¹⁴ *U. S. Stats.*, 65 Cong., 1 Sess., Procs., 45, 52; *ibid.*, 2 Sess., 69, 92, 98, 107, 131, 133, 158, 202, 222; *Official Bulletin*, Oct. 11, 1917, Jan. 14, May 15, 1918; *N. Y. Times*, Oct. 10, Nov. 13, 1917.

¹⁵ Executive order of Nov. 23, 1917. *N. Y. Times*, Dec. 1, 1917.

¹⁶ Executive order of Oct. 23, 1917. *Official Bulletin*, Nov. 1, 1917.

¹⁷ Proclamations of Feb. 21 and Sept. 2, 1918. *U. S. Stats.*, 65 Cong., 2 Sess., Procs., 105, 200.

¹⁸ Executive orders of Aug. 14, 1917 and June 23, 1918. *Emergency Legislation*, 174-176; *Official Bulletin*, June 24, 1918.

¹⁹ Proclamations of Dec. 8, 1917 and Sept. 16, 1918. *U. S. Stats.*, 65 Cong., 2 Sess., Procs., 84, 204. These must, of course, be distinguished from the War-Time Prohibition Act, passed by Congress.

²⁰ Most of the licensing requirements were canceled by the proclamations of Jan. 7, Jan. 25, and Feb. 11, 1919. *U. S. Stats.*, 65 Cong., 3 Sess., Procs., 275, 285, 287. The prohibition regulations were modified so as to permit the manufacture of near-beer and other non-intoxicating beverages, by the proclamations of Jan. 30 and Mar. 4, 1919. *Ibid.*, 286, 293.

by executive order to the Attorney General in an attempt to avert the sugar famine and to lower the high cost of living.²¹

Similar steps to control the fuel resources of the nation were taken by the President under the provisions of the Food and Fuel Control Act. Doctor Harry A. Garfield was appointed Fuel Administrator by executive order of August 23, 1917,²² and empowered to carry out the fuel provisions of the act. He explained the purposes of the Fuel Administration to be "to secure the largest possible production of fuel at prices just to the producer and reasonable to the consumer."²³

As with regard to the food resources, so the President likewise inaugurated a system of licenses for controlling the distribution of coal and coke and the various other fuel products, such as fuel oil and natural gas;²⁴ and fixed the prices to be charged.²⁵ The Fuel Administrator, with the approval of the President, issued several very drastic orders for the purpose of conserving fuel, such as those for the elimination of electric advertising signs and for certain "lightless nights;"²⁶ and the sensational order of January 17, 1918, suspending the operation of practically all industry east of the Mississippi River for a period of five days beginning January 18, and making the following nine Mondays "heatless days." This order was promulgated in spite of protests from every part of the country, opinions that the order exceeded the authority of the Executive, and an official resolution of the Senate asking for delay and an explanation,²⁷ — all of which illustrates clearly the vast war-time power of the President.

As with regard to the powers of the Food Administration, so those of the Fuel Administration were revived by the President after the signing of the armistice and the virtual ending of the war, in order to meet a particular situation. After having pronounced the coal strike called for November 1, 1919, unjustifiable

²¹ *N. Y. Times*, Nov. 22, 1919.

²² *Official Bulletin*, Aug. 24, 1917.

²³ *Ibid.*, Sept. 6, 1917.

²⁴ Proclamations of Jan. 31, Mar. 15, and Sept. 16, 1918. *U. S. Stats.*, 65 Cong., 2 Sess., Procs., 99, 113, 205.

²⁵ *Official Bulletin*, Aug. 24, Sept. 6, Oct. 29, 1917.

²⁶ *Ibid.*, Nov. 14, Dec. 15, 1917.

²⁷ See *N. Y. Times*, Jan. 17, Jan. 18, 1918.

and unlawful, and having requested, without success, that the strike be called off,²⁸ President Wilson, by executive order of October 30, restored the war-time powers of Fuel Administrator Garfield and gave him full authority to use these powers in applying such regulations as he should deem necessary to avert a coal famine. Accordingly, the priority list of May 25, 1918, was restored, the Railroad Administration was vested with power to divert coal shipments, the Department of Justice was charged with the enforcement of the maximum price list, drastic restrictions on the use of coal by "non-essential" industries were put into effect, railroad service was curtailed, and rigid regulations were applied concerning the distribution of coal to consumers, until the strike was called off December 10.²⁹

It should be noted that all these restrictions and regulations concerning both the food and fuel resources, were established by order of the President, even after the signing of the armistice, by virtue of the "war powers" conferred upon him by the Food and Fuel Control Act, a war measure which had not yet expired.

Control of Trade and Industry. Congress, by virtue of its power over interstate and foreign commerce,³⁰ may make such regulations with regard to both foreign and domestic commerce as it may deem necessary or helpful towards the crippling of an enemy and the success of a war. It chose to exercise this power during the events leading up to the War of 1812 and during the war itself by passing several embargo and non-intercourse acts.³¹ During the Civil War, Congress exercised the same power by forbidding all intercourse between citizens of the loyal states and of those in rebellion, except by license from the President.³²

²⁸ See President Wilson's statement concerning the strike. *N. Y. Times*, Oct. 26, 1919.

²⁹ *Ibid.*, Nov. 1, Dec. 2, Dec. 9, Dec. 11, 1919. The restrictions were only gradually lifted after the calling off of the strike.

³⁰ *Constitution*, Art. I, Sec. 8, Cl. 3.

³¹ Acts of Mar. 1 and June 28, 1809; Apr. 4, Apr. 14, and July 6, 1812; Dec. 17, 1813; Feb. 4, 1815. *Annals of Cong.*, 10 Cong., 2 Sess., App., 1824; 11 Cong., II, App., 2508; 12 Cong., II, App., 2262, 2269, 2354; 13 Cong., II, App., 2781; 13 Cong., 3 Sess., App., 1899. Regarding the purpose of these as war measures, see *Writings of James Madison*, VIII; 185-186, n., 188.

³² Act of July 13, 1861. 12 *Stat. at L.*, 255, 257 (Sec. 5). President

Even without authority from Congress, however, the President is also vested with considerable power in regard to the control of trade in time of war. By virtue of his position as Commander-in-Chief, he may declare a blockade of the enemy's ports,³³ and thus cut off completely both the import and export trade with the enemy nation. President Polk exercised this power by ordering a blockade of the Mexican ports in 1846,³⁴ President Lincoln of the Southern ports in 1861,³⁵ and President McKinley of certain Cuban ports in 1898.³⁶ It has also been held that the President may, at least in the absence of congressional action to the contrary, permit a limited commercial intercourse with the enemy in time of war, and impose such conditions as he sees fit.³⁷

During the recent war with Germany and Austria-Hungary, President Wilson never declared a blockade of those countries, as he might have done, for the reason that such action would not have cut off the supplies slipping through neutral countries. Since the United States was practically the only source of supply for these neutral countries, the problem was more effectively solved by giving the President blanket authority to regulate the foreign trade of the United States. Under the provisions of the Espionage Act, the President was empowered, whenever in his opinion the public safety should require, to forbid the exportation of any articles to any country except under such regulations as he might choose to make.³⁸ Under the Trading with the Enemy Act, he was given similar power with respect to imports.³⁹

Lincoln, by order of Feb. 28, 1862, permitted such intercourse under rules and regulations prescribed by the Secretary of the Treasury. *Works of Abraham Lincoln*, (Federal ed.), V, 438. The removal of the restrictions so placed was begun immediately after the cessation of hostilities (Apr. 29, 1865), and completed by June 24, 1865. Dunning, *Reconstruction: Political and Economic*, 27.

³³ *Prize Cases*, 2 Black, 635 (1862).

³⁴ Richardson, *Messages and Papers of the Presidents*, IV, 492, 493.

³⁵ Proclamations of Apr. 19 and 27, 1861. *Ibid.*, VI, 14, 15.

³⁶ Proclamations of Apr. 22 and June 27, 1898. *Ibid.*, X, 202, 206.

³⁷ *Hamilton v. Dillin*, 21 Wall., 73, 87 (1874); cf. Glenn, *The Army and the Law*, 69-70.

³⁸ Act of June 15, 1917. Public No. 24, 65 Cong. (Title VII), in Wigmore, *op. cit.*, 493.

³⁹ Act of Oct. 6, 1917. Public No. 91, 65 Cong. (Sec. 11), in Wigmore, *op. cit.*, 557.

By virtue of this authority, President Wilson at various times during the war proclaimed an embargo on long lists of articles,⁴⁰ and prohibited the importation of other articles,⁴¹ except under a system of licenses which he placed under the supervision of the War Trade Board.⁴² In this way he was able to exercise complete control over the foreign trade of the United States during the period of the war, and thus to prevent supplies from reaching the enemy, either directly or through neutral channels.

In time of war the President also exercises a large measure of control over business within the United States, his power in that regard being apparently based largely on statutory provisions, but also being exercised in some instances by virtue of no specific authority. For example, President Wilson immediately upon the declaration of a state of war with Germany and on later occasions placed restrictions upon the German insurance companies doing business in the United States and made regulations with regard to German letters patent, his action in each case being based, not on statute, but solely on "the authority vested in me as such."⁴³

Considerable power was vested in the President by the National Defense Act of 1916, which authorized him in time of war or when war is imminent, to order any individual or firm having the facilities to comply, to furnish supplies or equipment for the Army in preference to any other commitments, at prices named by him; and in case of default, to seize and operate the plant.⁴⁴ Similar power to requisition shipyards and factories for the manufacture of supplies needed for the Navy was vested in the President by the Naval Emergency Fund Act of 1917.⁴⁵

⁴⁰ Proclamations of July 9, Aug. 27, Sept. 7, Nov. 28, 1917; Feb. 14, 1918. *U. S. Stats.*, 65 Cong., 1 Sess., Procs., 39, 47, 50; *ibid.*, 2 Sess., 76, 102.

⁴¹ Proclamations of Nov. 28, 1917; Feb. 14, 1918. *Ibid.*, 2 Sess., 77, 103.

⁴² Created under authority of the Trading with the Enemy Act, and composed of representatives of the Secretaries of State, Treasury, Agriculture, and Commerce, and of the Food Administrator, the Shipping Board, and the War Industries Board. See executive orders of Oct. 12, 1917 and Aug. 20, 1918. *Official Bulletin*, Oct. 15, 1917, Sept. 3, 1918.

⁴³ Proclamations of Apr. 6, May 24, and July 13, 1917. *U. S. Stats.*, 65 Cong., 1 Sess., Procs., 10, 25, 40.

⁴⁴ Act of June 3, 1916. Public No. 85, 64 Cong. (Sec. 120), in Wigmore, *op. cit.*, 439-440.

⁴⁵ Act of Mar. 4, 1917. Public No. 391, 64 Cong. *Ibid.*, 458.

On July 28, 1917, the War Industries Board was created by the Council of National Defense, with the approval of the President, to serve as "a clearing house for the war industry needs of the Government;"⁴⁶ and in March, 1918, its functions were by a mere letter of the President continued, expanded, and vested almost exclusively in the chairman, Bernard M. Baruch.⁴⁷ Finally, by executive order of May 28, 1918, the President formally made the War Industries Board an independent administrative agency acting directly under his authority, and thereby created what one writer says was "in effect an Industries Administration analogous in all essential respects to the Food and Fuel Administrations previously created. . . . The Board derived its legal powers directly from the President. It therefore had the power to exercise, within its field, all the powers of the President over industry entrusted to him by statute or possessed by him in virtue of his position of head of the armed forces of the Nation."⁴⁸

Under the direction of its chairman and upon the sole authority of the President, the board assumed a very large control of the industrial resources of the nation. It acted as an agency for centralizing the war demands of the several government services; purchased supplies for the Allies; created new facilities and new sources of supply; determined priorities of production and delivery; fixed prices; and sought to secure the elimination of waste and unnecessary effort, and the securing of economy of time and materials. The chairman was in general required to act as the "general eye of all supply departments in the field of industry," to be a sort of "industrial chief of staff."

While the various orders and decisions of the board were legally only "requests," they were backed by the President's powers to requisition factories, to withhold fuel and transportation facilities, and in other ways to compel compliance; so that

⁴⁶ *War Cyclopedia* (1st ed.), 293.

⁴⁷ See President Wilson's letter of Mar. 4, 1918, to Mr. Baruch, outlining the functions of the board and the duty of the chairman. *Official Bulletin*, Mar. 31, 1918.

⁴⁸ Willoughby, *Government Organization in War Time and After*, 76-77; see also C. N. Hitchcock, "The War Industries Board; Its Development, Organization and Functions," in *Jour. Pol. Econ.*, XXVI, 545-565 (June, 1918), esp. 547, 563.

the War Industries Board was well described as being able to "mold the country's industrial system almost as it will," and as "a notable demonstration of the power of war to force concert of effort and collective planning with centralized responsibility."⁴⁹ Through these various means, the President was enabled to exercise a complete control over all businesses having any relation to war needs, which in modern times includes practically the entire business life of the nation.

Control of Property. The President likewise has considerable power in time of war with regard to private property. In the United States it has been held that a state of war justifies the seizure and confiscation of enemy property found within the borders of the country,⁵⁰ in accordance with which theory the Confiscation Acts of the Civil War⁵¹ were passed, providing for the seizure of rebel property under certain conditions. The general practise of nations has, however, brought about the modern rule of international law that such enemy property is no longer subject to confiscation, but only to sequestration for the period of the war.⁵²

The power of such sequestration might be presumed to rest with the President by virtue of his executive authority, without any further statutory authorization. All doubt was removed, however, during the recent war, by inserting in the Trading with the Enemy Act provisions which empowered the President, through the Alien Property Custodian created by that act, to take over and administer for the period of the war such enemy property as he might require.⁵³ President Wilson carried out these powers through various executive orders, which fixed the

⁴⁹ C. N. Hitchcock, *op. cit.*, 565, 566.

⁵⁰ *Brown v. United States*, 8 Cr., 110, 122 (1814); *Miller v. United States*, 11 Wall., 268, 305 (1870); *cf.* Glenn, *The Army and the Law*, 112, 115.

⁵¹ Acts of Aug. 6, 1861, July 17, 1862, and Mar. 3, 1863. 12 *Stat. at L.*, 319, 589, 820.

⁵² Lawrence, *Principles of International Law*, 424-429.

⁵³ See esp. Secs. 6, 7. Wigmore, *op. cit.*, 548-552. The seizure of property by the Alien Property Custodian could not be enjoined by the courts, his decisions as to what constituted enemy character being held to be unreviewable preceding the transfer of the property. *Salamandra Insurance Company v. New York Life Insurance Company*, 254 Fed. Rep., 852 (1918).

salary of the Alien Property Custodian and defined his powers and duties, and which entrusted him with the management, administration, and disposition of enemy property of all kinds, including such things as real estate, personal property, seats on stock exchanges, and businesses of all descriptions.⁵⁴ In short, the Alien Property Custodian was authorized "to step into the shoes of the enemy and exercise all the rights and powers with respect thereto which the enemy could exercise if no state of war existed."⁵⁵

Other powers with regard to the control of property were also vested in the President. Several acts of Congress authorized the taking of land for military or naval purposes,⁵⁶ under which President Wilson seized such property as the Jamestown Exposition site and large tracts of land in Maryland, and ordered the residents to vacate immediately, the compensation to be determined later.⁵⁷ Finally, by the Act of May 16, 1918,⁵⁸ the President was empowered during the war to seize private property of any kind, whether real estate, buildings, furnishings, or improvements, "as he may determine to be necessary for the proper conduct of the existing war," with compensation to be fixed later. Altho under this act nothing was exempt from being commandeered, its chief purpose was to facilitate the seizure of housing for war workers and government offices,⁵⁹ in accordance with which the President created a Housing Corporation as an agency through which the Secretary of Labor might carry out the provisions of the act.⁶⁰

By these means the President was enabled to exercise a com-

⁵⁴ Executive orders of Oct. 29, 1917; Feb. 26, Apr. 2, July 15, July 16, Aug. 29, Sept. 12, Sept. 13, Nov. 12, 1918. *Official Bulletin*, Oct. 31, 1917; Mar. 2, July 18, July 23, Aug. 31, Sept. 17, Sept. 20, 1918; Jan. 3, 1919.

⁵⁵ Statement of the Alien Property Custodian (A. Mitchell Palmer), in *Official Bulletin*, Mar. 2, 1918.

⁵⁶ Acts of June 15 and Oct. 6, 1917; Apr. 26, 1918. Public Nos. 23, 64, 140, 65 Cong.

⁵⁷ Proclamations of June 28, Oct. 16, Dec. 14, 1917; June 10, 1918. *U. S. Stats.*, 65 Cong., 1 Sess., Procs., 30; *ibid.*, 2 Sess., 63, 87, 146.

⁵⁸ Public No. 149, 65 Cong.

⁵⁹ See statements of Assistant Secretary of War Crowell, in *N. Y. Times*, Mar. 21, Mar. 22, 1918.

⁶⁰ Executive order of Oct. 29, 1918. *Official U. S. Bulletin*, Jan. 21, 1919.

plete control of all private property within the United States, whose use might in his opinion benefit the enemy or which he might consider essential to the war needs of the country.

Control of Transportation and Communication. The importance of the transportation and communication services in the successful prosecution of war is perhaps second only to that of the actual fighting service. The close relation between the operation of these lines of communication and the military operations, and the necessity of securing their absolute control by the military authorities, in order to insure the regular and systematic transportation of troops and supplies, were recognized quite early during the Civil War. Congress, by Act of January 31, 1862,⁶¹ authorized the President, when in his judgment the public safety should require it, to take possession of any or all telegraph and railroad lines within the United States, together with all their equipment and personnel; to prescribe rules and regulations for the use of these lines; and to place them under military control.

Accordingly, President Lincoln, by order of February 11, 1862, appointed D. C. McCallum as Military Director and Superintendent of Railroads, giving him full authority to take possession of the railroads and to do "all things that may be necessary and proper" for the transportation of troops and supplies;⁶² and on May 25, 1862, the President took formal military possession of all the railroads in the United States.⁶³ More than 2,000 miles of railroad were operated, mostly in Southern or border states,⁶⁴ which were turned back to their owners under certain regulations on August 8, 1865.⁶⁵

During the first months of the recent war, an attempt was made to meet the transportation needs of the nation by leaving the operation of the railroads under private control, but as one system under the direction of the Railroads War Board, a special committee of the American Railway Association,

⁶¹ 12 *Stat. at L.*, 334. By joint resolution of July 14, 1862, this act was declared not to authorize the President to engage in any work of railroad construction. *Ibid.*, 625.

⁶² Richardson, *Messages and Papers of the Presidents*, VI, 101.

⁶³ *Ibid.*, 113. See also orders of May 28 and July 11, 1862. *Ibid.*, 113, 116.

⁶⁴ *Cong. Record*, 65 Cong., 2 Sess., 2556, 6923 (Feb. 19, May 13, 1918).

⁶⁵ *Ibid.*, 2556; Fleming, *Documentary History of Reconstruction*, I, 205-206.

coöperating with Mr. Daniel Willard, chairman of the Transportation and Communication Committee of the Council of National Defense.⁶⁶ This did not prove satisfactory, however, and before the end of 1917, suggestions were made from authoritative sources that the President should take control of the railroads and operate them for the period of the war,⁶⁷ authority for which he already possessed by virtue of the Army Appropriations Act of 1916.⁶⁸

Acting under this authority, President Wilson, by proclamation of December 26, 1917,⁶⁹ took possession of all the rail and water transportation systems in the United States (excepting street-car and interurban lines⁷⁰), and vested their administration in Secretary of the Treasury McAdoo, who was designated Director General of Railroads. Later the President confirmed and continued the authority of Mr. McAdoo as Director General,⁷¹ under the provisions of the Railway Control Act,⁷² passed by Congress in order that the President's authority might be complete and undoubted.⁷³ This act confirmed the President's power to take over, control, and operate the railroads under the act of 1916, authorized him to compensate the owners and initiate rates, and provided that he might relinquish such control at his discretion, but that he might in no case exercise it longer than one year and nine months after the declaration of peace.

Acting under the authority so conferred upon him by the

⁶⁶ *War Cyclopedia* (1st ed.), 229, 273.

⁶⁷ See report of Interstate Commerce Commission, in *N. Y. Times*, Dec. 6, 1917.

⁶⁸ Act of Aug. 29, 1916. *U. S. Stats.*, 64 Cong., 1 Sess., 619, 645.

⁶⁹ *U. S. Stats.*, 65 Cong., 2 Sess., Procs., 89.

⁷⁰ By act of Apr. 22, 1918, the President was also authorized to take over and operate such of these as might be necessary for the transportation of the employees at the shipyards and plants. *Official Bulletin*, May 7, 1918.

⁷¹ Proclamation of Mar. 29, 1918. *U. S. Stats.*, 65 Cong., 2 Sess., Procs., 119.

⁷² Act of Mar. 21, 1918. Public No. 107, 65 Cong., in Wigmore, *op. cit.*, 575-583.

⁷³ Senator Cummins and others held, for example, that the President's scheme of compensation to the owners required additional legislation, and it was doubted by many whether he had the power to fix rates under the act of 1916. That the President doubted his own authority on some of these points is indicated by his statement that he intended to recommend additional legislation. See *N. Y. Times*, Dec. 27, 1917.

President, Director General McAdoo immediately assumed active charge, unified the railroads of the country into one system, made regulations concerning their operation, named his subordinate officers, fixed both interstate and intrastate rates,⁷⁴ increased the wages of employees, provided for the adjustment of labor disputes, and in general exercised complete control,⁷⁵ not only of the railroads, but also of the coastwise steamship lines, ship canals, and express companies, control of which had later been taken over by the President.⁷⁶

Upon the resignation of Mr. McAdoo a short time after the armistice, the President appointed Walker D. Hines to succeed him as Director General,⁷⁷ and continued through him to exercise control of the transportation systems of the United States with the view of rendering adequate service at a reasonable cost.⁷⁸ In his message to Congress, May 20, 1919, President Wilson announced his intention to return the railroads to their owners at the end of the year,⁷⁹ but no legislation on the subject of future railroad control having by that time been enacted by Congress, he postponed the date of return, setting it by formal proclamation at March 1, 1920.⁸⁰ Congress having finally enacted railroad legislation by that date,⁸¹ the railroads were then returned as promised. Thus, for more than two years, more than half of that time after the virtual end of the war, the President exercised complete control of the transportation systems of the country, a control which he might have extended considerably

⁷⁴ The right to fix intrastate as well as interstate rates was upheld in *Northern Pacific Railway Company v. North Dakota*, 250 U. S., 135 (1919).

⁷⁵ A considerable number of orders issued by the Director General are listed in Emery and Williams, *Governmental War Agencies Affecting Business*, 44-49.

⁷⁶ Proclamations of Apr. 11, July 22, Nov. 16, 1918. *U. S. Stats.*, 65 Cong., 2 Sess., Procs., 125, 164, 245.

⁷⁷ Proclamation of Jan. 10, 1919. *Ibid.*, 3 Sess., 278.

⁷⁸ "Until the signing of the armistice the Government's first railroad duty was to run the railroads to win the war, but now that the war is won, the Government's railroad job is to render an adequate and convenient transportation service at reasonable cost." Statement of Mr. Hines on assuming office, Jan. 11, 1919. *Official U. S. Bulletin*, Jan. 13, 1919.

⁷⁹ See his message in *United States Bulletin*, May 26, 1919.

⁸⁰ Proclamation of Dec. 24, 1919. *N. Y. Times*, Dec. 25, 1919.

⁸¹ The Esch-Cummins Railroad bill was signed by the President Feb. 28, 1920. *Ibid.*, Feb. 29, Mar. 1, 1920.

longer, on account of the delay in the ratification of the peace treaty and the formal declaration of peace.

With regard to shipping, a large measure of control was exercised by the President during the recent war through the Shipping Board and the Emergency Fleet Corporation, created by the Act of September 7, 1916.⁸² Acting under the direction of the President, this board and this corporation had as their war-time task the providing of an adequate merchant marine to meet the extraordinary transportation demands of the war and the losses from submarine attacks. The Shipping Board controlled directly the operation of all American ocean vessels; and by means of authority delegated to it by executive order, requisitioned all American ships completed or building during the war, fixed freight rates, and determined terminal charges.⁸³ The Emergency Fleet Corporation, acting as the construction agency of the Shipping Board (and, through it, of the President), added a vast amount of tonnage to the shipping in use during the war.⁸⁴

Additional shipping was secured through the seizure of enemy and neutral vessels lying within United States ports at the outbreak of the war. International law and practise allow a belligerent to requisition and utilize such vessels, if needed for war purposes,⁸⁵ and the presumed authority of the President to act under this rule was further strengthened by the Joint Resolution of May 12, 1917,⁸⁶ expressly authorizing him to take over enemy vessels for use and operation during the war, and by a provision in the Emergency Shipping Fund Act of June 1, 1917,⁸⁷ empowering him similarly to requisition any vessel within the jurisdiction of the United States. Acting therefore under authority both of international law and of statute, President Wilson seized the German and Austrian vessels interned in the ports of

⁸² Public No. 260, 64 Cong., in Wigmore, *op. cit.*, 447-454; amended by Act of July 15, 1918. Public No. 198, 65 Cong., *ibid.*, 455-457.

⁸³ See, for example, its announcement requisitioning on Oct. 15, 1917, all American vessels of not less than 2500 tons capacity. *Official Bulletin*, Oct. 13, 1917. See also executive orders of June 18 and Dec. 3, 1918. *Ibid.*, June 20, Dec. 16, 1918.

⁸⁴ Figures for the early months of the war may be found in *War Encyclopedia* (1st ed.), 253.

⁸⁵ Lawrence, *Principles of International Law*, 456, 626-628.

⁸⁶ Public Res. No. 2, 65 Cong., in *Emergency Legislation*, 18.

⁸⁷ Public No. 23, 65 Cong., in Wigmore, *op. cit.*, 482-484.

the United States,⁸⁸ and likewise requisitioned the Dutch ships lying idle within its jurisdiction.⁸⁹ The docks and terminal equipment of the German steamship companies were also taken over,⁹⁰ under express statutory authority,⁹¹ the compensation therefor being determined by the President after the signing of the armistice.⁹²

It has already been noted that the Act of Congress authorizing military control of the railroads during the Civil War, also authorized the President to assume such control of the telegraph lines.⁹³ Acting under this authority, the President, on February 26, 1862, took military possession of all the telegraph lines in the United States, and appointed Anson Stager Military Superintendent of these lines, exercising military control during the remainder of the war. It was expressly ordered, however, that such control was "not intended to interfere in any respect with the ordinary affairs of the companies or with private business."⁹⁴

During the recent war, a much more comprehensive control was established over all the means of communication. As early as 1912, Congress had authorized the President, "in time of war or public peril or disaster," to close, control, or take over and use all the radio stations within the jurisdiction of the United States;⁹⁵ and by joint resolution of July 16, 1918, he was further empowered to take possession of and to operate, in time of war, any telegraph, telephone, marine cable, or radio system, such control not to extend beyond the date of the declaration of peace.⁹⁶

⁸⁸ Executive orders of May 14, May 16, May 22, June 12, June 30, July 3, Sept. 27, Nov. 2, 1917. *Emergency Legislation*, 169-170, 171-173, 179, 189; *N. Y. Times Current Hist. Mag.*, VI, 237.

⁸⁹ Proclamation of Mar. 20, 1918. *U. S. Stats.*, 65 Cong., 2 Sess., Procs., 117. The 87 Dutch vessels thus seized were returned in the early part of 1919. *Official U. S. Bulletin*, Feb. 3, 1919.

⁹⁰ Proclamation of June 28, 1918. *U. S. Stats.*, 65 Cong., 2 Sess., Procs., 160.

⁹¹ Urgent Deficiency Act of Mar. 28, 1918. Public No. 109, 65 Cong.

⁹² Proclamation of Dec. 3, 1918. *U. S. Stats.*, 65 Cong., 3 Sess., Procs., 270.

⁹³ *Supra*, 214.

⁹⁴ See order of Feb. 25, 1862. Richardson, *op. cit.*, VI, 108-109.

⁹⁵ Act of Aug. 13, 1912. 37 *Stat. at L.*, 302 (Sec. 2).

⁹⁶ Public Res. No. 38, 65 Cong. *U. S. Stats.*, 65 Cong., 2 Sess., 904.

Acting therefore under express statutory authority, President Wilson, immediately upon the entry of the United States into the World War, directed the Secretary of the Navy to assume control of all the means of radio communication within the jurisdiction of the United States.⁹⁷ On July 22, 1918, he took over the telegraph and telephone systems, vesting their administration in the Postmaster General;⁹⁸ and shortly before the armistice was signed, he likewise assumed control of the marine cables.⁹⁹

The war-time control thus assumed of the wire services differed from that assumed in the Civil War in that it was not strictly for military purposes, but to overcome the difficulties of a competitive system arising out of the war, and "to broaden the use of the service at the least cost to the people."¹⁰⁰ The seizure of the cables, tho vigorously assailed as an undue exercise of executive power,¹⁰¹ was explained by the President to have been necessary in order "to keep an open wire constantly available between Paris and the Department of State, and another between France and the Department of War,"¹⁰² and was upheld by the courts as a legitimate exercise of his war power.¹⁰³

Complete control over these various systems of communication was exercised by the Postmaster General, acting under the direction and authority of the President, extending to the unification of the various competing companies, the ousting of the old officers in many cases, and the fixing of rates, both interstate and intrastate,¹⁰⁴ until the systems were returned to private control.¹⁰⁵

⁹⁷ Executive order of Apr. 6, 1917. Willoughby, *Government Organization in War Time and After*, 40.

⁹⁸ Proclamation of July 22, 1918. *U. S. Stats.*, 65 Cong., 2 Sess., Procs., 163.

⁹⁹ Proclamation of Nov. 2, 1918. *Ibid.*, 228.

¹⁰⁰ Statement of Postmaster General Burleson on assuming control. *Official Bulletin*, July 24, 1918.

¹⁰¹ See argument of ex-Justice Hughes. *N. Y. Times*, Dec. 28, 1918.

¹⁰² Address to Congress, Dec. 2, 1918. *Ibid.*, Dec. 3, 1918.

¹⁰³ *Commercial Cable Company v. Burleson*, 255 Fed. Rep., 99 (1919).

¹⁰⁴ The President's right to fix both interstate and intrastate rates for the wire services was upheld in *Dakota Central Telephone Company v. South Dakota*, 250 U. S., 163 (1919).

¹⁰⁵ The cables were, by order of Apr. 29, 1919, returned to their owners on May 2, 1919; the telegraph and telephone systems on August 1, 1919. *United States Bulletin*, May 1, 1919; *Pol. Sci. Quar.*, XXXIV, Supp., 25 (Sept., 1919).

IV. Powers Relating to the Termination of War

CHAPTER XIII

POWER OF TERMINATING WAR IN THE UNITED STATES

There are generally said to be three different ways in which a war may be terminated: (1) there may be a simple cessation of hostilities on the part of the belligerents; (2) there may be a complete subjugation of one of the belligerents by the other, involving the conquest and annexation of its territory and the extermination of its government; and (3) there may be a formal re-establishment of peaceful relations between the belligerents through an agreement embodied in a special treaty.¹

Instances of the first method are rare, and have never occurred in the case of wars to which the United States has been a party. The second method is more common in the history of nations,² but would seem to be precluded as a possibility on the part of the United States, because of the doctrine laid down by the Supreme Court that wars of conquest and aggrandizement by the United States are unconstitutional.³ A treaty of peace is

¹ Oppenheim, *International Law*, II, 275; Lawrence, *Principles of International Law*, 568.

² For examples of each of these methods, see Oppenheim, *op. cit.*, II, 275-276, 279.

³ "The genius and character of our institutions are peaceful and the power to declare war was not conferred upon Congress for the purpose of aggression or aggrandizement, but to enable the general government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens. A war, therefore, declared by Congress can never be presumed to be waged for the purpose of conquest or the acquisition of territory; nor does the law declaring the war imply an authority to the President to enlarge the limits of the United States by subjugating the enemy's country. . . . He may invade the hostile country, and subject it to the sovereignty and authority of the United States. But his conquests do not enlarge the boundaries of this Union, nor extend the operation of our institutions and laws beyond the limits before assigned to them by

therefore not only "the normal method of terminating war,"⁴ and the only method heretofore employed in the case of wars in which the United States has been a belligerent (excepting, of course, the Civil War), but has also apparently been considered throughout our entire history as the only possible method under the Constitution.

Recently, however, strong opinions have been expressed that wars may be terminated by the United States in other ways than by a formal treaty of peace. Thus, in an address before the Washington Commercial Club, March 18, 1919, Senator Lenroot (Wisconsin), speaking against the proposed constitution for the League of Nations and protesting particularly against the incorporation of that constitution into the peace treaty, made this statement: "We have accomplished the purpose we had when we declared war and, while it would be desirable to have a formal treaty of peace with Germany, it is not necessary. We can declare the war ended and go about our business, and I confidently predict that this is what will be done if the treaty is not ratified by the Senate."⁵ A statement by Senator Poindexter (Washington), issued on the same day, was to the same effect but even more explicit: "If the American delegation refuses to make peace with Germany, let the Entente make peace with Germany, and let Congress assemble and declare peace and pass a law to bring the American army home. Congress has the same power to declare peace that it has to declare war, and has full control over all movements of the army and navy, including the Commander-in-Chief."⁶ A well known journal likewise expressed the opinion that "Congress could at any time by simple resolution declare the state of war at an end,"⁷ and at least one distinguished jurist has concurred in these views, saying that "peace could, no doubt, also be restored by an Act of Congress."⁸

Moreover, serious attempts have recently been made in Congress to assert the power of that body to declare peace independent of the legislative power." *Fleming v. Page*, 9 How., 603, 614-615 (1849). Cf. also S. E. Baldwin, in *Am. Jour. Int. Law*, XII, 14 (Jan., 1918); *Memoirs of John Quincy Adams*, XII, 144 (Jan. 10, 1845).

⁴ Oppenheim, *op. cit.*, II, 280.

⁵ *N. Y. Times*, Mar. 19, 1919.

⁶ *Ibid.*, Mar. 18, 1919.

⁷ *The Nation*, May 31, 1919.

⁸ S. E. Baldwin, in *Am. Jour. Int. Law*, XII, 13-14 (Jan., 1918).

ently of a formal treaty. Thus, Senator Knox, on June 10, 1919, declared that any attempt on the part of the Peace Conference so to intertwine the peace treaty and the covenant of the League of Nations as to prevent their separation by the Senate, would be met with a resolution in Congress declaring the war formally at an end.⁹ On June 23, Senator Fall (New Mexico) and Senator Edge (New Jersey) each offered joint resolutions in the Senate declaring the state of war between Germany and the United States terminated; and on September 15, Representative Mason (Illinois) submitted a concurrent resolution in the House declaring peace "with all the world."¹⁰

These resolutions were all allowed to die in committee, but immediately after the first rejection of the treaty on November 19, Senator Lodge, Republican floor leader and chairman of the Senate Committee on Foreign Relations, offered a concurrent resolution "that the said state of war between Germany and the United States is hereby declared to be at an end," while Senator Knox, on December 13, offered a joint resolution declaring simply, "That peace exists between the United States and Germany." These two resolutions were taken under serious consideration by the Senate Committee on Foreign Relations, and on December 20, Senator Knox reported from that committee a substitute joint resolution, repealing the joint resolution of April 6, 1917, which declared a state of war with Germany, and providing that such repeal should be effective, with certain stated conditions upon Germany, "upon the ratification of a treaty of peace between Germany and three of the principal allied and associated powers."¹¹

The expressions of opinion noted, the presentation and serious consideration of these resolutions by the responsible leaders of the majority party in Congress, and the later unprecedented action in actually pressing a similar resolution to a vote,¹² would

⁹ Press report in *Chicago Tribune*, June 11, 1919.

¹⁰ S. J. Res. 60, Mr. Fall; S. J. Res. 61, Mr. Edge; H. Con. Res. 32, Mr. Mason, *Cong. Record*, 66 Cong., 1 Sess., 1629, 5808.

¹¹ S. Con. Res. 17, Mr. Lodge; S. J. Res. 136, Mr. Knox; S. J. Res. 139, Mr. Knox. *Cong. Record*, 66 Cong., 1 Sess., 9321; *ibid.*, 2 Sess., 540, 981.

¹² Immediately after the second rejection of the peace treaty by the Senate on Mar. 19, 1920, Senator Knox moved consideration of his resolution repealing the declaration of war, and several proposals were again

seem to make pertinent a brief examination into the subject of the power, in the United States, to terminate war and declare peace.

Passing over the obviously unsound inference of Senator Poin-dexter that Congress might assemble in special session on its own motion, without a call from the President,¹³ it might seem evident that since Congress has the power to bring about a state of war by means of a declaration, which has in every case taken the form of an act of Congress or of a joint resolution,¹⁴ it could also, by a mere repeal of such declaration, terminate the state of war and bring about a state of peace.¹⁵ It should be pointed out in the first place, however, that Congress does not have an absolute power of repeal; that is, it cannot repeal each and every

made in the House for terminating the state of war and declaring peace by action of Congress. On April 9, the House, by a large majority (242-150), passed the Porter resolution (prepared by the House Committee on Foreign Affairs), which declared that "Whereas, the President of the United States in the performance of his constitutional duty to give to Congress information of the state of the Union, has advised Congress that the war with the Imperial German Government has ended, . . . the state of war declared to exist between the Imperial German Government and the people of the United States . . . is hereby declared at an end." This resolution also provided for the repeal of all the war emergency legislation, and gave Germany 45 days in which to declare a like termination of the war under the conditions imposed, with a penalty of an economic boycott in case of refusal. The Knox resolution, repealing the declarations of war against both Germany and Austria-Hungary, and declaring the state of war with those countries at an end, was substituted in the Senate, passed by that body on May 15, by a vote of 43-38, and accepted by the House on May 21. It failed of repassage over the President's veto, the final vote in the House being 219-152. It seems likely, however, that some such resolution may be passed after the inauguration of the new Republican administration. See texts of the Porter and Knox resolutions in *N. Y. Times Current Hist. Mag.*, XII, 209-210, 372-373 (May, June, 1920). For President Wilson's veto message, see *ibid.*, XII, 707-709 (July, 1920).

¹³*Supra*, 224.

¹⁴The declarations in the cases of the War of 1812, the war with Mexico, and the war with Spain were in the form of acts of Congress; those in the recent wars with Germany and Austria-Hungary in the form of joint resolutions.

¹⁵This is the particular point emphasized by Judge Baldwin, *op. cit.*, note 8. The same view is also held by Professor Corwin. See his article, "The Power of Congress to Declare Peace," in *Mich. Law Rev.*, XVIII, 669-675 (May, 1920), esp., 673, 674.

legislative enactment and thereby restore the *status quo ante*. For example, states are admitted to the Union by means of an enabling act passed through the ordinary legislative channels; but no state can be deprived of its place in the Union by a subsequent repeal or nullification of that earlier legislative act of admission.¹⁶ Hence, it does not necessarily follow that Congress can, by an act of repeal, terminate a state of war and declare a state of peace, merely because it can, by a legislative declaration, bring about such a state of war.

In the second place, it should be noted that such an act of repeal is subject to the approval or veto of the President, just as the original declaration, and hence its enactment would not be so simple a matter as these senators seem to conclude. If such an act were passed over the President's veto, the President could still prevent the complete restoration of a normal state of peace by declining to resume diplomatic relations with the former enemy or to perform other acts that are strictly within his jurisdiction but which presuppose a state of peace. A declaration of peace by Congress through a concurrent resolution, such as that proposed by Senator Lodge, would clearly be unconstitutional, since it would deprive the President of his constitutional right to approve or disapprove every act of legislative effect.¹⁷ At the most, such a resolution would amount to nothing more than an expression of opinion, and could be entirely disregarded by the President.¹⁸ Apparently Senator Lodge and the Foreign Relations Committee of the Senate recognized the impossibility of any attempt by Congress to declare peace without the coöperation of the President, when the Lodge concurrent resolution was dropped and a substitute joint resolution was proposed.¹⁹

Finally, while the Constitution specifically gives Congress the power to declare war, it does not anywhere expressly confer the power of declaring or making peace. Hence it is by no means certain that Congress has any power, either by a repeal of its original declaration, or by an independent act, resolution, or declaration, to terminate a state of war and bring about a state

¹⁶ See Willoughby, *Constitutional Law*, I, 426.

¹⁷ *Constitution*, Art. I, Sec. 7, Cl. 3.

¹⁸ Cf. Quincy Wright, in *Columbia Law Rev.*, XX, 128-139, 131 (Feb., 1920).

¹⁹ *Supra*, 225, note 12.

of peace. A study of the debates in the Convention of 1787 will throw some light on the intention of the makers of the Constitution in that regard.

When the power of declaring war was under consideration on August 17, Mr. Pinkney opposed vesting the power in the Legislature but favored the Senate as the best depository, saying that "it would be singular for one authority to make war, and another peace." Mr. Ellsworth, on the other hand, thought there was a material difference between the cases of making war and declaring peace, adding that "war also is a simple and overt declaration, peace attended with intricate and secret negotiations." After the power of declaring war had been definitely voted to Congress, Mr. Butler, evidently agreeing with Pinkney that the power of making war and peace should be in the same hands, moved to add the words "and peace" after the word "war," thus giving to the Legislature the power over both. Gerry seconded the motion, remarking that the "Senate are more liable to be corrupted than the whole Legislature." However, the motion was lost by unanimous vote of the States, the Convention thus taking a definite stand against giving Congress the power to make peace.²⁰

The intention of the Convention as to the proper location of the power to make peace is further shown in the debates and in the actions taken concerning the treaty-making power. The clause regarding treaties as reported to the Convention read as follows: "The President by and with the advice and consent of the Senate shall have power to make Treaties, but no treaty shall be made without the consent of two thirds of the members present." When this came up for consideration on September 7, Mr. Wilson attempted to have the concurrence of the House of Representatives added to that of the Senate, but his motion was lost, receiving only two affirmative votes.²¹ Madison's motion to except treaties of peace from the two-thirds provision, "allowing them to be made with less difficulty than other treaties," was adopted unanimously, whereupon he moved to authorize two-thirds of the Senate to make treaties of peace without the concurrence of the President. "The President," he said, "would necessarily derive so much power and importance from a state

²⁰ *Madison's Journal* (Hunt ed.), II, 188-189.

²¹ *Ibid.*, 327-328.

of war that he might be tempted, if authorized, to impede a treaty of peace." Mr. Butler seconded this motion and argued strenuously for it "as a necessary security against ambitious and corrupt Presidents." Mr. Gorham and Gouverneur Morris opposed the motion, the latter holding "that no peace ought to be made without the concurrence of the President, who was the general Guardian of the National interests."²² Madison's motion failed,²³ but the next day the whole clause was reconsidered, and another distinct effort was made, under the leadership of Mr. Sherman, to require the sanction of the Legislature to "rights established by a treaty of peace." Tho seconded by Mr. Morris, Sherman's motion does not appear even to have been acted upon, the final action of the Convention being to adopt the clause as originally reported, the exception of treaties of peace from the two-thirds provision being stricken out.²⁴

The discussion throughout shows very clearly that an overwhelming majority in the Convention thought, as did Ellsworth, "that there was a material difference between the cases of making war and declaring peace."²⁵ that it did not consider Congress as vested with the power to make peace unless given express authority. The Convention declined emphatically to give Congress this express authority, but, on the other hand, did consider the power of making peace as belonging under the treaty-making power to the President and Senate. This is also the view expressed by Justice Story, when he said that the proposal to add the power "to make peace" to the power already given to Congress "to declare war" was unanimously rejected, "upon the plain ground that it more properly belonged to the treaty-making power."²⁶ Ex-Justice Hughes recently made practically the same statement,²⁷ and other well known authorities on American

²² *Madison's Journal* (Hunt ed.), II, 330.

²³ *Ibid.*

²⁴ *Ibid.*, 333-334.

²⁵ *Ibid.*, 188. "It is not at all necessary that the power of declaring war and that of making peace are vested by a Constitution in the same hands." Oppenheim, *International Law*, II, 283-284. "The power to declare war does not necessarily include that of making a treaty of peace. . . They are generally associated together, though not always." Baker, *Halleck's International Law*, I, 329.

²⁶ Story, *Commentaries on the Constitution*, II, 88.

²⁷ In *Central Law Jour.*, LXXXV, 206 (Sept. 21, 1917).

constitutional law likewise hold that the Constitution vests the power of making peace, not in Congress, but in the President and the Senate.²⁸

It is significant in this connection, not only that the recent claims to a power in Congress of declaring peace are entirely without precedent and contrary to the best interpretations of the Constitution, but also that such claims are refuted by specific declarations by Congress itself. Thus, every important legislative enactment of Congress during the recent war which contained any reference to the conclusion of peace, shows that Congress itself contemplated no possibility of terminating the state of war through its own action alone. Two of the measures — the Food and Fuel Control Act and the Trading with the Enemy Act — apparently considered the President alone vested with considerable authority in that regard, the former declaring that

²⁸ For example, Schouler says that the power of Congress under the Confederation "embraced clearly the determination of both war and peace, while that of the Congress of our Constitution is in expression confined to war alone, since the full treaty-making power is lodged by the latter instrument (which makes no mention of declaring peace at all) with the new branch of government, the Executive, subject to a two-thirds ratification in the Senate." *Constitutional Studies*, 137.

Likewise, the opinion of such distinguished authorities as ex-President Taft and ex-Attorney-General Wickersham is well known. For a careful statement by the latter of the constitutional question, see *N. Y. Times Current Hist. Mag.*, XII, 367-372 (June, 1920). And Senator Sterling of South Dakota (Rep.), tho he voted for the Knox resolution, made the following significant statement shortly after the presidential election: "I believe, from the Harding campaign speeches, that the first step will be the passage of a peace resolution similar to the Knox resolution. I am, however, a little hazy as to just where we will be left when we have passed the resolution. We declare a state of peace with Germany and Austria. But without a similar declaration on their part, I do not see that peace will have been formally established. The passage of a peace resolution by Congress is not the method of making peace contemplated by the Constitution of the United States." *Chicago Tribune (Staff Correspondence)*, Nov. 22, 1920. For the contrary view, see especially the opinions of Senator Knox and Professor Corwin, in *N. Y. Times Current Hist. Mag.*, XII, 372-376 (June, 1920), and *Mich. Law Rev.*, XVIII, 669-675 (May, 1920), respectively.

It is worthy of note in this connection that President Wilson, in his veto of the Knox resolution, ignored the constitutional question entirely, basing his veto rather on the grounds that the passage of the resolution meant the abandonment of our allies and of the objects for which we had fought the war.

the provisions of the act should cease to be in effect "when the existing state of war . . . shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President;" the latter that "the words 'end of the war,' as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of the war' within the meaning of this Act."²⁹

Other measures specifically contemplated the termination of the war by means of a treaty of peace. Thus, the Emergency Shipping Fund Act provided that the authority granted in that act to the President should cease "six months after a final treaty of peace is proclaimed between this Government and the German Empire;" the Railway Control Act required that Federal control should not continue longer than "one year and nine months next following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace;" the Overman Act was to terminate "six months after the termination of the war by the proclamation of the treaty of peace, or at such earlier time as the President may designate;" and the Control of Communications Act provided that control of the telegraph and telephone systems "shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace."³⁰

It seems clear, therefore, that a formal treaty of peace is the only method contemplated by the Constitution for the termination of a foreign war and the restoration of peace, as it has heretofore been the only method ever suggested or actually employed in practise. The conclusion of peace rests therefore, in the United States, with the President and the Senate, as the treaty-making power.

²⁹ Act of Aug. 10, 1917 (Sec. 24); Act of Oct. 6, 1917 (Sec. 2). Wigmore, *Source-Book of Military Law and War-Time Legislation*, 512, 544.

³⁰ Act of June 15, 1917; Act of Mar. 21, 1918 (Sec. 14); Act of May 20, 1918 (Sec. 1); Joint Resolution of July 16, 1918. Wigmore, *op. cit.*, 484, 583, 586, 602.

CHAPTER XIV

POWERS WITH REGARD TO A TREATY OF PEACE

Since the conclusion of a treaty of peace is the only method by which a foreign war may be terminated by the United States,¹ it is necessary to note the powers of the President in that connection. In the first place, while the Senate shares the treaty-making power with the President and therefore enjoys considerable power in connection with the definitive conclusion of peace, certain preliminaries may be undertaken that are within the province of the President alone. These are the armistice and the preliminary protocol.

An armistice, strictly speaking, merely provides for a temporary suspension of hostilities, but, if general in its scope, it is usually entered into "with a view to negotiations for peace;"² while a preliminary protocol is a preliminary settlement indicating the lines along which the peace negotiations are to be conducted.³ The two cannot always be clearly differentiated, however, in that the latter may also provide for the suspension of hostilities, and both are generally used "as devices of the executive department for reaching a basis of negotiations without awaiting the difficult and delayed conferences necessary for the final treaty."⁴ Neither requires the ratification of the Senate before going into effect, each being considered as "a proper exercise of his war powers by the President."⁵ Both illustrate also the power of the President to enter into important international agreements without the consent of the Senate, in that through

¹ See preceding chapter.

² Lawrence, *Principles of International Law*, 564-567; Davis, *Elements of International Law* (4th ed.), 341.

³ Cf. Benton, *International Law and Diplomacy of the Spanish-American War*, 226-228.

⁴ *Ibid.*, 227.

⁵ Foster, *Practice of Diplomacy*, 318.

them he may not only determine as to the continuance or termination of hostilities, but may also lay down the conditions to be imposed upon the hostile power and practically commit the nation to a particular line of policy in the final peace conference.

President Madison sought in this way to bring about a termination of the war of 1812 almost as soon as it was begun. Jonathan Russell, the American chargé d'affaires in London, acting under instructions from Secretary of State Monroe issued only a few days after the declaration of war by Congress,⁶ made two attempts to arrange an armistice in the early fall of 1812.⁷ Altho these attempts were unsuccessful, the British government declining to consent to an armistice on the conditions named, they were useful in clarifying the issues of the war, in that Monroe selected from among the "many just and weighty causes of complaint against Great Britain," the orders in council and the impressment of seamen as those "considered to be of the highest importance."⁸

The power of the Executive thus to define the issues of the war and to determine how far to yield in the interests of peace, was further illustrated when the counter-proposal of the British Government for a cessation of hostilities was rejected, on the ground that it was based on the repeal of the orders in council alone and disregarded the question of impressment.⁹ "It will be seen from this," says an eminent historian, "that Madison and Monroe continued the war on the question of impressment alone."¹⁰

The power of the President, as Commander-in-Chief, not only to terminate hostilities by arranging an armistice, but also to formulate such conditions for the armistice as to bind the nation to a particular policy in the peace conference, was clearly demonstrated in 1898, when in response to the Spanish request for

⁶ Monroe to Russell, June 26, 1812. *Am. State Papers, For. Rel.*, III, 585-586; see also instructions of July 27. *Ibid.*, 586.

⁷ Russell to Lord Castlereagh, Aug. 24, Sept. 12, 1812. *Ibid.*, 589, 591.

⁸ *Ibid.*, 585.

⁹ Warren to Monroe, Sept. 30, 1812; Monroe to Warren, Oct. 27, 1812. *Ibid.*, 595-597.

¹⁰ Channing, *History of the United States*, IV, 480; cf. Updyke, *Diplomacy of the War of 1812*, 136-139.

terms of peace, President McKinley embodied his conditions in the protocol of August 12, which he authorized the Secretary of State to sign on the part of the United States.¹¹

This protocol not only provided for an immediate suspension of hostilities and a subsequent peace conference to arrange the final terms, but stipulated that Spain should relinquish her claim to sovereignty over Cuba, cede Porto Rico and an island in the Ladrones to the United States, and evacuate these places immediately. The final disposition of the Philippines was to be left to the peace conference, the United States meanwhile to occupy and hold the city, bay, and harbor of Manila.¹² The protocol thus took on the character of much more than a preliminary agreement governing the termination of hostilities, but committed the United States to a certain very definite policy in the peace conference and approached very closely to a definitive treaty of peace.¹³

Similarly, the armistice conditions imposed upon Austria-Hungary and Germany by President Wilson in 1918,¹⁴ not only laid down terms which safeguarded the victory of the Allies in a military and naval sense, but, as embodying the famous "fourteen points," were generally understood to have committed the United States to a definite political policy in the peace conference, for his supposed departure from which in that conference the President has since undergone the bitterest criticism.

Having the power, through the armistice and the preliminary protocol, thus to terminate hostilities and to a considerable extent define the future peace conditions, the President may also, on his own authority alone, undertake measures which presume the virtual ending of the war and the existence of a state of peace. President McKinley, having proclaimed the suspension of hostilities with Spain in accordance with the protocol of August 12, 1898, immediately raised the blockade of the ports of Cuba and Porto Rico, and on August 18 ordered 100,000 of the volunteers, or as near that number as practicable, to be mustered

¹¹ *For. Rel.* 1898, 825.

¹² See text of protocol. *Ibid.*, 828-830.

¹³ Cf. J. B. Moore, in *Pol. Sci. Quar.*, XX, 391-392; Moore's *Digest*, V, 213; Crandall, *Treaties: Their Making and Enforcement*, 103-104.

¹⁴ The texts of these may be conveniently found in *N. Y. Times Current Hist. Mag.*, IX, 364-368, 396-397 (Dec., 1918).

out.¹⁵ President Wilson likewise ordered a general demobilization immediately after the signing of the armistice,¹⁶ and lifted many of the war-time restrictions before the definitive conclusion of peace,¹⁷ thus assuming, as he might, that the armistice was something more than a mere suspension of hostilities.

It might seem that the President, through such exercise of power as has been noted, could, of his own authority alone, not only terminate hostilities, but bring about an actual termination of the state of war. Thus, in 1898, many neutral powers treated the protocol of August 12 as practically ending the war between the United States and Spain, and permitted public vessels of the United States to enter and use their ports freely as in time of peace.¹⁸ So also it was reported in March, 1919, that the American peace delegation at Paris was considering bridging over the period between the signing of the peace treaty and its ratification by the Senate, by a *modus vivendi* declaring the war ended as of date of signature, so as to terminate the war legislation and enable an earlier return to normal conditions.¹⁹

It was even solemnly held in a court decision rendered at about the same time, that the "war was brought to a close when the armistice was signed," because President Wilson, in announcing the armistice to Congress, used the words, "The war thus comes to an end."²⁰ In numerous other cases involving war-time legislation eminent counsel argued that the state of war was terminated by the signing of the armistice and other acts of the President; and on June 10, 1919, Representative Dyer (Massachusetts), a member of the House Judiciary committee, cabled the President to "exercise the authority which I am sure you pos-

¹⁵ Message to Congress, Dec. 5, 1898. Richardson, *op. cit.*, X, 174-175.

¹⁶ Demobilization was virtually completed by Oct. 14, 1919, the army having by that time been reduced to less than 300,000 men. *N. Y. Times Current Hist. Mag.*, XI, 230 (Nov., 1919).

¹⁷ Such as restrictions on the use of food and fuel, on trade and industry, and on the manufacture of beverages. *Supra*, 206, note 20.

¹⁸ Moore's *Digest*, VII, 335.

¹⁹ Associated Press dispatch, Mar. 15, 1919.

²⁰ Federal Judge Walter Evans, in a decision handed down in Louisville, Ky., Mar. 24, 1919. Reported in *Chicago Tribune*, Mar. 25, 1919. The peace resolution passed by the House, Apr. 9, 1920, likewise referred to these words of the President as authority for declaring the war ended. *Supra*, 226, note 12.

sess" to proclaim the war ended and demobilization completed, and thereby prevent war-time prohibition from going into effect.²¹

However, the better opinion is that the President alone cannot, by a protocol, proclamation, or other act, bring about the termination of a state of war and the existence of a state of peace. Thus, Attorney-General Griggs in 1898 held that the signing of the protocol of August 12 and the suspension of hostilities did not terminate the state of war between the United States and Spain;²² Attorney-General Palmer likewise ruled in 1919 that a state of war could not be terminated by act of the President alone, but only by a treaty of peace;²³ and President Wilson himself declined to attempt any such exercise of power, declaring "not only that in my judgment I have not the power by proclamation to declare that peace exists, but that I could in no circumstances consent to such a course prior to the ratification of a formal treaty of peace."²⁴

Finally, the courts have definitely decided that the signing of an armistice is not equivalent to the termination of a state of war. Judge Hand, of the United States District Court of New York, pointed out that "so long as the treaty of peace is not ratified, there is some chance of the resumption of hostilities," even tho that chance might be very slight;²⁵ while the Supreme Court likewise unanimously held that the cessation of hostilities in the recent war by means of the armistice did not mean the "conclusion of the war," and pointed to various "facts of public knowledge" which showed the war emergency to be still in existence.²⁶

In the definitive conclusion of peace through a formal treaty, the President, altho he is of course required to obtain the "advice

²¹ *Chicago Tribune*, June 11, 1919.

²² 22 *Op. Atty. Gen.*, 190, 191.

²³ See his ruling on the War-Time Prohibition Act, in *N. Y. Times*, Aug. 28, 1919; also his telegram to Judge Evans, in case cited in this chapter, note 20.

²⁴ Letter to Senator Fall, Aug. 20, 1919. *N. Y. Times*, Aug. 22, 1919.

²⁵ See decisions rendered by him, in cases involving the validity of war-time prohibition and wartime cable control, Jan. 20 and Aug. 20, 1919. *N. Y. Times*, Jan. 21, Aug. 21, 1919.

²⁶ *Hamilton v. Kentucky Distilleries and Warehouse Co.*, 251 U. S., 146 (1919).

and consent" of the Senate before putting a treaty into effect.²⁷ has practically complete control of all the other functions and processes of treaty-making.²⁸ In the first place, the President alone may appoint the commissioners who are to negotiate the treaty of peace, and he is not required to submit their nominations to the Senate for confirmation. This power rests upon the now well-recognized right of the President to use, at his discretion, special agents of a diplomatic or semi-diplomatic character — a right which one writer²⁹ points out has four bases: (1) a presumptive legal basis in the acts of Congress giving the President a contingent fund which he may expend for foreign intercourse without specific accounting;³⁰ (2) the recognized right of the President to take the initiative in foreign affairs;³¹ (3) the general practise of governments under international law;³² and (4) necessity.³³

Prior to 1815, the names of such special agents or commissioners chosen to negotiate treaties were generally submitted to the

²⁷ *Constitution*, Art. II, Sec. 2, Cl. 2.

²⁸ "As for making and declaring peace, the power . . . pertains no longer to Congress, but is lodged for negotiation and conclusion in the President." Schouler, *Constitutional Studies*, 140. "As the war power is shared between the President and Congress, but Congress does not share in the executive power, the breadth of the President's prerogatives as to the closing of war becomes of special importance. The limits imposed directly by the Constitution are few, its main one being the requirement of the consent of the Senate . . . To make a declaration of war requires the assent of Congress as well as of the President. To end a war, it is enough for him to obtain the assent of the Senate, if he acts under the treaty-making power." S. E. Baldwin, in *Am. Jour. Int. Law*, XII, 13.

²⁹ H. M. Wriston, "Presidential Special Agents in Diplomacy," in *Am. Pol. Sci. Rev.*, X, 481-499, esp. 482-488.

³⁰ As the earliest acts of this sort may be mentioned the acts of July 1, 1790; Feb. 9, 1793; May 1, 1810. *Annals of Cong.*, 1 Cong., II, App., 2232; 2 Cong., App., 1411; 11 Cong., II, App., 2585.

³¹ *Supra*, ch. II.

³² "There seems to be no reason why the government of the United States cannot, in conducting its diplomatic intercourse with other countries, exercise powers as broad and general or as limited and peculiar, or special, as any other government. . . In fact, there has been no limit placed upon the use of a power of this kind, except the discretion of the sovereign or ruler of the country." Report of Senate Committee on Foreign Relations, 1893, quoted by H. M. Wriston, *op. cit.*, 486-487.

³³ See H. M. Wriston, *op. cit.*, 487-488.

Senate for confirmation.³⁴ According to this practise, President Madison even summoned the Senate in special session in May, 1813, to consider his course in accepting the Russian offer of mediation, and to confirm the peace commissioners he had already appointed and sent on their way. The Senate confirmed the nominations of John Quincy Adams and Senator James Bayard, but rejected that of Secretary of the Treasury Albert Gallatin, on the ground that "in the opinion of the Senate, the powers and duties of the Secretary of the Department of the Treasury and those of an Envoy Extraordinary to a Foreign Power, are so incompatible that they ought not be and remain united in the same person."³⁵ Upon the failure of this attempt to open peace negotiations, the President appointed another peace commission in January, 1814, again submitting the names to the Senate for confirmation.³⁶

Since 1815, however, it has been very unusual to submit the appointments of treaty negotiators to the Senate at all,³⁷ and especially so with regard to peace commissioners. President Polk even felt it necessary to keep secret for a time his selection of Nicholas Trist as peace commissioner in 1847,³⁸ altho he vested Trist with unusual powers, not only to accompany the army and negotiate peace at a favorable opportunity, but also to control the military and naval operations.³⁹ His later appointments of Sevier and Clifford to negotiate the final treaty were, however, submitted to the Senate for confirmation, tho it should be noted that Sevier was in reality selected for the permanent post

³⁴ Crandall, *Treaties: Their Making and Enforcement*, 75-76.

³⁵ Updyke, *Diplomacy of the War of 1812*, 146-148.

³⁶ This commission consisted of John Quincy Adams, James Bayard, Henry Clay, Jonathan Russell, and Albert Gallatin, the first four names being submitted to the Senate on Jan. 14 and confirmed Jan. 18. Gallatin's name was added on Feb. 8, and confirmed the next day without serious opposition, he being no longer in the Cabinet. *Ibid.*, 167-168.

³⁷ For instances of such appointments without the consent of the Senate, see Moore's *Digest*, IV, 453-457.

³⁸ *Diary of James K. Polk*, II, 468, 483; cf. II, 262, 268, 273.

³⁹ "Should he (Trist) make known to you in writing that the contingency has occurred in consequence of which the President is willing that further active military operations should cease, you will regard such notice as a direction from the President to suspend them until further orders from this department." Secret orders to Gen. Scott and Commodore Perry, quoted by H. M. Wriston, *op. cit.*, 495.

of minister to Mexico with authority to complete the peace treaty negotiations, and that Clifford was added merely because of Sevier's illness.⁴⁰ President McKinley likewise appointed the peace commissioners of 1898 without consulting the Senate;⁴¹ while President Wilson, in 1918, altho Congress was in session, merely "announced" the peace delegation in a White House statement, and took the unprecedented step of including himself.⁴²

Having the power to appoint peace commissioners with or without the consent of the Senate, the President is not restricted in his choice, but may select whom he will, without qualification. Public opinion seems to expect, however, that distinguished men of both parties should be chosen, and one of the severest criticisms of President Wilson was his apparent selection of men who would reflect merely his own personal views. President Polk likewise found great difficulty in selecting a commissioner satisfactory to the country, probably one reason for the choice of a person in a somewhat obscure position.⁴³

⁴⁰ *Diary of James K. Polk*, III, 378-383, 389-391. The treaty had been ratified by the Senate, Mar. 10, 1848, with amendments that required new negotiations.

⁴¹ However, the commissioners were appointed and the treaty of peace completed during a recess of Congress. But in 1901, President McKinley, without consulting the Senate, altho it was then in session, appointed W. W. Rockhill as special commissioner to China, invested with full power to negotiate with the representatives of the other allied powers and of China concerning a settlement of the questions arising out of the Boxer Rebellion.

⁴² Together with Secretary of State Lansing, Henry White, Edward M. House, and Gen. Tasker H. Bliss. *Official U. S. Bulletin*, Nov. 19, Nov. 30, 1918. President Wilson's decision to participate personally in the peace negotiations at Paris raised again the interesting, tho purely academic question as to the President's constitutional right to leave the jurisdiction of the United States during his term of office. It is worthy of note that Hamilton's plan for a constitution definitely contemplated the consent of Congress for the absence of the President from the United States and even then for the exercise of his powers by the Vice-President during such absence. See *Elliot's Debates*, V, 587. The law and precedents governing the President's right to leave the country are discussed by Park Benjamin, in *The Independent*, Mar. 29, 1919. See also opinion of ex-Attorney General Wickersham, in *N. Y. Times*, Nov. 27, 1918; and Taft, *Our Chief Magistrate and His Powers*, 50-51.

⁴³ *Diary of James K. Polk*, II, 466. Nicholas Trist was Chief Clerk of the Department of State when appointed peace commissioner.

There seems also to be a considerable body of opinion that, since the Senate is constitutionally a coördinate part of the treaty-making power, it should be represented on the commission to negotiate peace. President Madison probably deferred to this sentiment in appointing Senator Bayard, a Federalist, and Henry Clay, formerly in the Senate but at that time Speaker of the House, to the peace commission of 1814.^{43a} President McKinley went so far in that respect as to give the Senate a majority on the peace commission of 1898;⁴⁴ and President Wilson's entire disregard of the Senate in making up the peace commission in 1918 called forth especially severe criticism, as tho it were an utter contempt for the constitutional position and rights of that body.

As a matter of fact, tho senators have been quite commonly appointed on commissions to negotiate treaties, including the peace treaty of 1898, there is excellent authority for the view that their appointment to such missions is not only inexpedient and improper, but also contrary to the constitutional principle that no civil officer of the United States shall at the same time be a member of either house of Congress.⁴⁵ President Monroe, for example, stated in 1818 that he "did not approve the principle of appointing members of Congress to foreign missions, but, as it had been established in practice from the first organization

^{43a} Both Bayard and Clay, however, evidently considered it improper to combine the functions of peace commissioner and member of Congress, as both resigned their respective seats immediately upon appointment to the peace commission. In fact, Bayard wrote to Gov. Haslett of Delaware, under date of May 3, 1813, that "the acceptance of the appointment is on my part an implied and virtual resignation of my seat in the Senate. . . ." See *Report, Am. Hist. Assn. 1913*, II, 221; Clay & Oberholtzer, *Henry Clay*, 75.

⁴⁴ Cushman K. Davis (Minn.), Republican, chairman of the Senate Committee on Foreign Relations; William P. Frye (Me.), Republican; and George Gray (Del.), Democrat. The other members of the commission were William R. Day, who resigned as Secretary of State in order to head the commission, and Whitelaw Reid, former minister to France.

⁴⁵ "No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office." *Constitution*, Art. I, Sec. 6, Cl. 2.

of the present Government, and, as the members of Congress would not be satisfied with the opposite principle, he did not think it proper to make it a rule for himself."⁴⁶

The Senate itself has upon occasion taken a positive stand against the participation of members of that body in treaty negotiations. Thus, in 1898, the Senate declined to confirm the nominations of Senators Hoar, Cullom, and Morgan to the Hawaiian Commission "upon the ground that it would no longer consent to the selection of members of this body to negotiate important treaties that were to be reported to the Senate."⁴⁷ In fact, the feeling in the Senate was at that time so strong against that practise that the Judiciary Committee "almost unanimously" contemplated reporting a bill or resolution prohibiting it for the future, and only refrained from doing so because it was thought that such action might be construed as a discourtesy to those senators who had acted under such appointments. The committee instructed Senator Hoar, however, to see the President and say that it hoped the practise would be discontinued; to which suggestion the President responded by assuring Senator Hoar that it would not occur again, altho he called attention to the difficulty of getting suitably qualified men outside of the Senate or House.⁴⁸

In 1903 the question again came before the Senate, and the judgment was almost unanimously as before. Senator Tillman said: "We had the Paris treaty or the Spanish or Philippine treaty negotiated by Senators whose votes, no doubt, were influenced by the fact that they were on that commission. I do not see why we should palter with this thing any longer. Probably we cannot convince the Executive that this practise is improper

⁴⁶ *Memoirs of John Quincy Adams*, IV, 72. Compare the attitude of Bayard and Clay in 1813. *Supra*, note 43a.

⁴⁷ Statement of Senator Hale, in U. S. Senate, Feb. 26, 1903. *Cong. Record*, 57 Cong., 2 Sess., 2695. The senators nevertheless served, their position being stated by Senator Cullom as follows: "We went out by appointment of the President; but there was a doubt about it, and the Judicial Committee of the Senate, in view of the doubtful attitude which we occupied as receiving appointments from the President while being members of the Senate, thought it best not to act upon our confirmation at all; and they were not acted upon. We were never confirmed by the Senate as a matter of fact." *Ibid.*, 2695.

⁴⁸ *Ibid.*, 2695, 2698.

and contrary to the will of the Senate, unless it is forbidden by law." He therefore offered an amendment to the provision under discussion providing, "that in making appointments to any such commission no Senator or Member of the House shall be eligible."⁴⁹

Altho the amendment was stricken out on a point of order, Senator Hale protested vigorously against the practise; Senator Bacon said it was "distinctly in opposition to the express policy, if not the express command of the Constitution of the United States;" Senator Hoar concurred in this view, and in addition stated that "hardly a more dangerous practice can be conceived than this one;" and Senator Allison said, "I am in sympathy with the general suggestion. . . . I do not believe a Senator or Representative should be appointed."⁵⁰ Senators Foraker and Teller were not ready to restrict senators from serving on such commissions under all circumstances, but thought the practise as a rule "reprehensible."⁵¹ Of all those who participated in the discussion, only Senators Aldrich, Platt (Connecticut), and McComas defended the practise, and opposed any limitation on such service by members of the Senate.⁵²

It would therefore seem that the recent outbursts of criticism against President Wilson, in the Senate and elsewhere, for his failure to appoint members of that body to the peace commission, have had little substantial basis, and that, as a matter of fact, while criticism of the personnel of the commission might be justified on other grounds, that based on any constitutional or inherent right of the Senate to representation on such commission is condemned, both by the Constitution and by the unprejudiced opinion of the Senate itself.

In the second place, the President has entire control of the peace negotiations on the part of the United States. He lays down the principles that are to form the basis of negotiation, he

⁴⁹ *Cong. Record*, 57 Cong., 2 Sess., 2696. The provision under consideration was one in the Sundry Civil bill authorizing the appointment of a commission to negotiate concerning rates of exchange between silver and gold using countries.

⁵⁰ *Ibid.*, 2695, 2696, 2697, 2698.

⁵¹ *Ibid.*, 2696, 2697.

⁵² *Ibid.*, 2696, 2698. Apparently the positive assurance by Senator Aldrich that no such appointments would be made in the case under consideration had a great deal to do with the abandonment of a specific prohibition.

determines whether to yield or to stand firm on a disputed point, and he decides the wisdom and expediency of compromises. The power and responsibility of the President in these respects are the same, whether he directs the negotiations from Washington, as did McKinley in 1898, or himself participates in the peace conference, as did Wilson in 1919. His power is only the more strikingly apparent in the latter case.

President McKinley was constantly in touch with the peace commissioners at Paris in 1898, and did not hesitate to make new demands and impose additional conditions during the progress of the negotiations, even tho he was not personally present. With regard to the disposition of the Philippines, for example, concerning which the Spanish commissioners had expected an opportunity to negotiate, President McKinley's original instructions were to demand the cession of the island of Luzon only. Later, however, additional instructions were sent that "the cession must be of the whole archipelago or none. The latter is wholly inadmissible, and the former must therefore be required." The American commission was divided as to the wisdom and justice of this demand,⁵³ and sought, moreover, to rest the claim of the United States to any part of the Philippines on the grounds of indemnity, the welfare of the islands, the "broken power of Spain," and the "anarchy" that would result from our complete withdrawal; while the President apparently desired to press the claim "by right of conquest," holding that the conquest of the entire archipelago had been accomplished by Dewey's destruction of the Spanish fleet in Manila Bay. In both matters, the commission yielded, of course, to the views of the President.⁵⁴ President Wilson's "domination" of the peace commission of 1919 was not more complete, nor is there anything improper about

⁵³ See *For. Rel. 1898*, 932-935, 945-948.

⁵⁴ Benton, *International Law and Diplomacy of the Spanish-American War*, 241, 243; See *For. Rel. 1898*, 935, 937, 940, 941. A recent interesting explanation of President McKinley's demand for the whole of the Philippines is to the effect that while his mind was not yet made up on the point, he received a communication from Lord Salisbury warning him that Germany was preparing to take over the islands if the United States withdrew, that such a step would probably precipitate a world war, and that in the interests of peace and harmony it would be best for the United States to retain the whole group. Latané, *From Isolation to Leadership*, 85.

such domination, since it is the President who is alone responsible for the results of the negotiations.

The Senate has, of course, the right to "advise and consent" to all treaties, and that has sometimes been interpreted to mean that the Senate has a right to "advise" and to be consulted before or during the course of the negotiations. There have been a few occasions upon which the President has sought the previous advice of the Senate, or has informed that body as to pending negotiations.⁵⁵ President Polk in 1846 referred to that practise as "eminently wise," and said that since the Senate is a branch of both the treaty-making and war-making powers, "it may be eminently proper for the Executive to take the opinion and advice of that body in advance upon any great question which may involve in its decision the issue of peace or war."⁵⁶

That practise has, however, been only rarely resorted to in later times,⁵⁷ and generally the "advice" of the Senate, as well as its "consent," has been given only after the negotiations have been completed and the final treaty laid before it by the President. There has been even less disposition to interpret that phrase ("by and with the advice and consent of the Senate") as giving the Senate any right to participate as a body in the negotiations, or to offer its advice as to the course and subject-matter of the negotiations. The determination of those has been generally held to be the function of the President alone, and only recently has there been any serious attempt to assert power on the part of the Senate to interfere or to interject its "advice" during the course of important treaty negotiations, especially those for the conclusion of peace.

Such an attempt was made, however, during the recent treaty negotiations at Paris, when Senator Knox, on June 10, 1919, in an attempt to force the separation of the covenant of the League of Nations from the treaty of peace then being negotiated, proposed a resolution declaring, among other things, that the Senate

⁵⁵ For a list of these, see Finley and Sanderson, *The American Executive and Executive Methods*, 280-282.

⁵⁶ Message to Senate, June 10, 1846. Richardson, *op. cit.*, IV, 449.

⁵⁷ It is significant that President Wilson, in announcing his famous "fourteen points" as the necessary conditions of peace, addressed Congress as a whole, and not the Senate alone. Address to Congress, Jan. 8, 1918. McKinley, *Collected Materials for the Study of the War*, 20-22.

of the United States, "being a coequal part of the treaty making power of this government and therefore coequally responsible for any treaty which is concluded and ratified," was "deeply concerned" over the treaty under negotiation; that it would regard a treaty confined to "the attainment of those ends for which we entered the war," as "fully adequate for our national needs;" that the conclusion of a "full and complete peace" was the paramount, if not the sole duty of the peace conference; that the question of a League of Nations should be reserved for "future separate and full consideration" by the people of any nation; and that the adoption by the peace conference of "the foregoing reasonable limitations and positions" would facilitate the early acceptance of the treaty by the Senate.⁵⁸

This attempt to inject the advice of the Senate into the peace conference at Paris, and to influence the course of the negotiations, was directly contrary, not only to the traditional view that treaty negotiation is a function belonging solely to the President, but also to the expressed views of Senate leaders on former occasions that the Senate should hold itself distinctly apart from these negotiations, and only take action when the treaty is completed and laid before it, or when its advice is sought by the President.

Thus, Senator Spooner, generally considered to be one of the best constitutional lawyers of his time, said with regard to this point: "The Senate has nothing whatever to do with the negotiation of treaties or the conduct of our foreign intercourse and relations save the exercise of the one constitutional function of advice and consent which the Constitution requires as a precedent condition to the making of a treaty. . . . From the foundation of the Government it has been conceded in practice and in theory that the Constitution vests the power of negotiation and the various phases — and they are multifarious — of the conduct of our foreign relations exclusively in the President. And he does not exercise that constitutional power. nor can he be made to do it, under the tutelage or guardianship of the Senate or of the House or of the Senate and House combined." ⁵⁹

Likewise, Senator Lodge, who recently has bitterly criticized

⁵⁸ See text of resolution in *Cong. Record*, 66 Cong., 1 Sess., 935. The resolution was, however, never acted upon.

⁵⁹ *Cong. Record*, XL, Pt. 2 (59 Cong., 1 Sess.), 1418 (Jan. 23, 1906).

President Wilson for "ignoring" the Senate in negotiating the Treaty of Versailles, had this to say in 1906: "No one, I think, can doubt the absolute power of the President to initiate and carry on all negotiations. . . . The action of the Senate becomes operative and actually effective only when a treaty is actually submitted to it. . . . We (the Senate) have no possible right to break suddenly into the middle of a negotiation and demand from the President what instructions he has given his representative. That part of the treaty making is no concern of ours. . . . It is a mere invasion of the powers and rights of the President if we are to plunge in at a stage of the negotiations where we have no business whatever and demand from him the instructions which he has given to his properly appointed representatives. When the treaty made by those representatives comes before us, then is the time, and not before, in which we can properly ask for information in regard to all that has led up to it." ⁶⁰

In the light of these strong expressions of opinion, it would seem that much of the recent criticism of President Wilson by Senator Lodge and his followers is unjustified, especially in so far as it is based on the relative constitutional position and powers of the Senate and the Executive in regard to the making of treaties. However overbearing and tactless the President may have been in his relations to the Senate, clearly he has at no time in his negotiation of the Treaty of Versailles exceeded the traditional view of his constitutional powers nor encroached on those of the Senate.

The power of the President with regard to the conclusion of peace does not end with the negotiation and signature of the treaty.⁶¹ The Senate must give its consent before the treaty can become fully effective and the state of war be actually terminated, but the fact that the Senate "advises and consents" to the ratification of a treaty is not conclusive, as the President alone can perform the final act of ratification. The Senate may amend a treaty, but the President may decline to accept these

⁶⁰ *Cong. Record*, XL, Pt. 2 (59 Cong., 1 Sess.), 1470.

⁶¹ The mere signing of the treaty is of some importance, since it operates to bring about a suspension of hostilities, if that has not already been done by a separate armistice or protocol. Hall, *International Law*, 554-555; cf. *Haver v. Yaker*, 9 Wall., 32 (1869).

changes and refuse to ratify the amended treaty. He may withdraw a treaty from the Senate at any time during its consideration, and he may, if he chooses, even decline to ratify a treaty that has been approved by the Senate in its original form. In other words, while the "advice and consent" of the Senate is a condition precedent to ratification, it is not mandatory — the President has the final word.⁶²

It is therefore within the power of the President to determine the actual date for the termination of a war and the conclusion of peace. That is done by means of a proclamation, announcing the effectiveness of the treaty or the exchange of ratifications, in the case of a foreign war, or merely announcing the termination of armed resistance, in the case of a civil war. The actual exchange of ratifications, or the actual suppression of rebellion, apparently are not enough; there must be an official declaration of the event by the President. "The war commences when government officially says it has commenced, and it ends when government officially says it has ceased to exist;"⁶³ and "government" in the latter case means the President.⁶⁴

Thus, the War of 1812 was officially terminated on February 18, 1815, the war with Mexico on July 4, 1848, and the war with

⁶² Crandall, *Treaties: Their Making and Enforcement*, 97. "The President is so supreme under the Constitution in the matter of treaties, excluding only the Senate's ratification, that he may negotiate a treaty, he may send it to the Senate, it may receive by way of 'advice and consent' the unanimous judgment of the Senate that it is in the highest degree for the public interest, and yet the President is as free when it is sent back to the White House with resolution of ratification attached, to put it in his desk never again to see the light of day as he was free to determine in the first instance whether he would or would not negotiate it. That power is not expressly given to the President by the Constitution, but it inheres in the executive power conferred upon him to conduct our foreign relations, and it is a power which inheres in him as the sole organ under the Constitution through whom our foreign relations and diplomatic intercourse are conducted." Senator John C. Spooner, in U. S. Senate, Jan. 23, 1906. *Cong. Record*, XL, Pt. 2 (59 Cong., 1 Sess.), 1419.

⁶³ Glenn, *The Army and the Law*, 64.

⁶⁴ "It is necessary to refer to some public act of the political departments of the government to fix the dates; and for obvious reasons, those of the executive department. . . must be taken." *The Protector*, 12 Wall., 700, 702 (1871). Of course the Court was here referring particularly to a civil war.

Spain on April 11, 1899, because of the President's proclamation of that date in each particular case. Only in the case of the war with Spain did that date correspond with the date of the actual exchange of treaty ratifications.⁶⁵ So also the Civil War is declared by the courts to have ended on April 2, 1866, with respect to all the insurrectionary states except Texas, and on August 20, 1866, with respect to Texas, because of the proclamations of the President declaring armed resistance at an end as of those dates, altho the last rebel army surrendered in May, 1865.⁶⁶

Recent war legislation also shows clearly that Congress contemplated that the date for the termination of the state of war with Germany and Austria-Hungary should be determined by proclamation of the President. Thus, there were express provisions declaring that "the fact and date of such termination shall be ascertained and proclaimed by the President," or that the end of the war "shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace." In other cases, it was provided that the acts should terminate a certain time "after a final treaty of peace is proclaimed," or "following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace," or similar language.⁶⁷

The powers of the President with regard to the conclusion of peace are therefore very extensive and quite definite. He may, on his own authority, undertake preliminary measures and enter into preliminary agreements for the termination of hostilities; through these preliminary measures, he may to a considerable extent lay down the conditions of permanent peace and commit the nation to them. With regard to the definitive treaty of peace, the President has entire control of the personnel of the peace commission, and entire control of the peace negotiations;

⁶⁵ For the proclamations, see Richardson, *op. cit.*, I, 560; IV, 627; *For. Rel.* 1898, 831. In the first case, the treaty was signed Dec. 24, 1814, and ratifications exchanged Feb. 17, 1815; in the second, the first treaty was concluded Feb. 2, 1848, and ratifications of the amended treaty exchanged May 30; in the last case, the treaty was signed Dec. 10, 1898, and approved by the Senate Feb. 6, 1899.

⁶⁶ *The Protector*, 12 Wall., 700, 702 (1871); *Lamar v. Browne*, 92 U. S., 187, 193 (1875); Birkhimer, *Military Government and Martial Law*, 367-368; Richardson, *op. cit.*, VI, 429-432, 434-438.

⁶⁷ *Supra*, 231.

he is required to obtain the "advice and consent" of the Senate before putting a treaty of peace into final effect, but when that is obtained, he is again absolute as to the final acceptance of the treaty, and as to the time for its becoming effective.

CHAPTER XV

POWERS WITH REGARD TO RECONSTRUCTION

With the termination of the emergencies of war, it might be expected that the exercise of the "war powers" should immediately cease. Ex-Justice Hughes thus expressed the view, shortly after the signing of the armistice at the close of the recent war, that in the harnessing of our strength for war we were acting "under the Constitution and not in violation of it," but that to use the war powers to control peace conditions was a proceeding "essentially vicious and constituting the most serious offense against our institutions."¹ Elihu Root, in his argument before the Supreme Court in the recent prohibition cases, likewise contended that the right to exercise the war powers no longer existed when the war emergency had passed. "The question," he said, "is much confused by a certain vague and colloquial use of the term 'war powers.' War confers no powers upon Congress. The powers are all in the Constitution of the United States. The condition of war does create exigencies which make appropriate the exercise of powers not otherwise existing. . . . On the other hand, when the war has progressed to an extent that the enemy has been forced into submission and there is no longer an army or navy to be raised and maintained the power ends because the exigency no longer exists."²

It is generally recognized, however, that the return to normal peace conditions can be made only gradually, that there must be a period of readjustment and reconstruction during which certain of the war powers must of necessity continue to be exercised. Thus Mr. Hughes admitted, in the speech quoted above, that "whenever, during the war, extraordinary powers were fittingly exercised and governmental control was assumed for war

¹ *N. Y. Times*, Nov. 29, 1918.

² *Ibid.*, Nov. 19, 1919.

purposes, the readjustment to conditions of peace must of course be effected gradually and with the circumspection essential to the protection of all the public and private interests involved." Professor Willoughby also remarks that "the power to wage war carries with it authority not only to bring it to a full conclusion, but, after cessation of active military operations, to take measures to provide against its renewal;"³ and the Supreme Court long ago held that "the power (to carry on war) is not limited to victories in the field. . . . It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress."⁴

Altho this opinion of the court referred particularly to the conditions resulting from the Civil War, there would here seem to be some warrant for the belief that the President, who as Commander-in-Chief has the power of waging war, is also entrusted with such powers as may be necessary to effect a complete return to the normal conditions of peace.

Some of these powers, such as the resumption of friendly relations with the opposing belligerent, may result from an ordinary constitutional function, whose exercise in this case is made necessary in order to completely restore the status of peace.⁵ In other cases, however, the termination of war and the consequent problems of reconstruction may bring about new situations which can only be met by the assumption of unusual authority and the exercise of extraordinary powers. Thus, the measures undertaken by Presidents Lincoln and Johnson in reorganizing and reconstructing the governments of the insurrectionary states of the South by executive orders and through military commanders,⁶ were upheld by the Supreme Court as a legitimate exercise by the President of his powers as Commander-in-Chief, subject to final determination by Congress.⁷

³ *Constitutional Law*, II, 1212.

⁴ *Stewart v. Kahn*, 11 Wall., 493, 507 (1870).

⁵ That is, the appointment and reception of accredited diplomatic agents.

⁶ See Dunning, *Reconstruction: Political and Economic*, 35-39.

⁷ *Texas v. White*, 7 Wall., 700, 730-731 (1868). However, the claim asserted by both Lincoln and Johnson, that the President had a right to determine the conditions upon which these reconstructed states might be fully restored to their former place in the Union, was successfully disputed by Congress. Hosmer, *Outcome of the Civil War*, 135-144, 225-227; Dunning, *op. cit.*, esp. chs. 4, 6.

The successful conclusion of a war frequently results in the acquisition of additional territory, and the determination of the status, rights, and government of such acquired territory is one of the problems of the reconstruction period. It is a well-recognized constitutional principle in the United States that, when territory is annexed by the United States or comes in any manner under its jurisdiction, Congress has an absolute right, from the moment of such acquisition, to determine the political rights and governmental organization of that territory.⁸ In the case of territory acquired by purchase or other peaceful means, Congress has generally seen fit to exercise that right by conferring temporary but complete governmental power on the President, until it can itself provide for a definite system of government.

Thus, after the cession of Louisiana, an act was passed providing that, until Congress should otherwise provide, "all the military, civil, and judicial powers exercised by the officers of the existing government of the same, shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct."⁹ Under this provision, the President exercised complete governmental authority over Louisiana until October 1, 1804, when the territorial government created by Congress went into effect.¹⁰ In almost identical language, Congress likewise vested the temporary government of Florida in the President,¹¹ all the powers of which were exercised by him through General Jackson as governor and through other subordinates until Florida was made a territory in 1822.¹² Alaska, acquired in 1867, was governed under the sole authority of the President until 1900, when Congress adopted a civil code and provided a form of civil government for that region;¹³

⁸ Willoughby, *op. cit.*, I, 403.

⁹ Act of Oct. 31, 1803. *Annals of Cong.*, 8 Cong., 1 Sess., App., 1245. Objections were made to this grant of power on the ground that the combination of all governmental powers in one man was unconstitutional, and that it made the President a despot. Thomas, *Military Government in Newly Acquired Territory of the United States*, 30-31; McMaster, *History of the People of the United States*, III, 9-10.

¹⁰ Act of Mar. 26, 1804. *Annals of Cong.*, 8 Cong., 1 Sess., App., 1293.

¹¹ Acts of Mar. 3, 1819 and Mar. 3, 1821. *Ibid.*, 15 Cong., 2 Sess., II, App., 2534; 16 Cong., 2 Sess., App., 1809.

¹² Act of Mar. 30, 1822. *Ibid.*, 17 Cong., 1 Sess., II, App., 2578; *cf.* Thomas, *op. cit.*, 65-70, 95, 98.

¹³ Act of June 6, 1900. 31 *Stat. at L.*, 321. The President exercised his

while Hawaii was governed by the President for more than two years under the authority of the joint resolution of annexation.¹⁴ The government of the Panama Canal Zone, established and carried on by the President at first under the authority of Congress,¹⁵ was, upon the failure of Congress to continue that authority, nevertheless continued by authority of several executive orders,¹⁶ until congressional sanction was again given in 1912.¹⁷ "Beginning with a government which might be termed political, it ended as a government by executive order, controlled by one man answerable only to the President of the United States, through the Secretary of War."¹⁸

While the status and government of acquired territory are clearly subject to the jurisdiction and control of Congress, it would seem that another constitutional principle may be derived from these examples, namely, that in the absence of congressional legislation, the President may exercise temporary governmental power on his own authority. In fact, the presumption seems to have existed from the time of the acquisition of Louisiana that the President could exercise such authority by virtue of his powers as Commander-in-Chief.¹⁹

authority in Alaska principally through the army commanders and through the Secretary of the Treasury (Alaska having, by executive order, been made a revenue district). Thomas, *op. cit.*, 279-280. Alaska was definitely organized as a territory by Act of Aug. 24, 1912. 37 *Stat. at L.*, 512.

¹⁴ Joint Resolution of July 7, 1898. 30 *Stat. at L.*, 750. A territorial government was established Dec. 3, 1900, by Act of Apr. 30, 1900. 31 *ibid.*, 141.

¹⁵ Acts of June 28, 1902 (Spooner Act) and Apr. 28, 1904. 32 *Stat. at L.*, 481; 33 *ibid.*, 429. The former authorized the President to establish judicial tribunals in territory acquired for the canal, in order to enforce the rules and regulations which he might deem necessary and proper for the preservation of order and public health; which authority was considered sufficient to permit the establishment of "such form of government as the President might determine." The latter act provided that the President should be vested with all the powers of government until the expiration of the 58th Congress, unless other provisions for a government were sooner made. See Goethals, *Government of the Canal Zone*, 11-20.

¹⁶ Executive orders of Apr. 1, 1905; Nov. 17, 1906; April, 1907; Jan. 8, 1908. Goethals, *op. cit.*, 43-50. The 58th Congress adjourned without making any further provision for the government of the Canal Zone.

¹⁷ Panama Canal Act of Aug. 24, 1912. 37 *Stat. at L.*, 560.

¹⁸ Goethals, *op. cit.*, 51.

¹⁹ Willoughby, *op. cit.*, I, 390; Thomas, *op. cit.*, 31-32.

In the case of territory acquired after conquest and occupation in war, the power of Congress likewise constitutionally attaches from the moment of acquisition. However, the problem of the temporary government of such territory, in the absence of provision by Congress, is somewhat different from that in the case of territory acquired peacefully. It involves the question of the continuance of the military government already existing under the authority and direction of the President, or of the power to set up some other form of government under other authority.

President Polk, after the ratification of the treaty of peace with Mexico in 1848, at first held that he had no power to continue the governments established by him over New Mexico and California during the war, but that upon the definitive conclusion of peace, these governments "necessarily ceased to exist." He also held that he had no power to establish other temporary governments without the sanction of Congress. "The war with Mexico having terminated," he said, "the power of the Executive to establish or continue temporary civil governments over these territories, which existed under the laws of nations whilst they were regarded as conquered provinces in our military occupation, has ceased. By their cession to the United States Mexico has no longer any power over them, and until Congress shall act the inhabitants will be without any organized government."²⁰ In order to prevent anarchy and confusion, the President therefore recommended the immediate establishment of territorial governments in New Mexico and California, he himself proposing in the meantime merely to maintain a small military force in those regions in order to "hold the country and protect the inhabitants against Mexican, Indian, or other enemies who might disturb them."²¹

The failure of Congress to provide for these newly acquired territories before adjournment, seemed to make necessary the establishment of a government by some other authority. Senator Benton, in a letter of August 27, 1848, addressed to the people of California, advised them to meet in convention, form a "cheap and simple" government, and take care of them-

²⁰ Messages of July 6 and July 24, 1848. Richardson, *Messages and Papers of the Presidents*, IV, 589, 596.

²¹ Richardson, *op. cit.*, IV, 589; *Diary of James K. Polk*, IV, 136.

selves until Congress should act. President Polk, considering this move "offensive" and "arrogant," and principally intended to make Colonel John C. Fremont (Benton's son-in-law) governor of an independent government of California, felt that some greater exercise of Executive power was necessary, if confusion, anarchy, and possible revolution were to be avoided. He therefore summoned his Cabinet to consider the "question of difficulty," namely, "what Government existed over the country until Congress should act, and what power to govern it the Executive possessed," and an agreement was reached that the temporary military governments established during the war should be regarded as governments *de facto*, still existing by the presumed consent of the people, and to which the people should be advised to submit.²²

Accordingly, Secretary of State Buchanan, in a letter of October 7, 1848, drew up instructions to the people of California, in which he expressed the position of the Administration as follows: "The termination of the war left an existing Government, a Government *de facto*, in full operation: and this will continue with the presumed consent of the people, until Congress shall provide for them a territorial Government. The great law of necessity justifies this conclusion. The consent of the people is irresistibly inferred from the fact that no civilized community could possibly desire to abrogate an existing Government, when the alternative presented would be to place themselves in a state of anarchy beyond the protection of all laws, and reduce them to the unhappy necessity of submitting to the dominion of the strongest."²³

Similar instructions were drawn up for the people of New Mexico by Secretary of War Marcy,²⁴ and President Polk himself announced the new policy to Congress in December, stating that "the very limited power possessed by the Executive has been exercised to preserve and protect them from the inevitable consequences of a state of anarchy. The only government

²² See Thomas, *op. cit.*, 130; *Diary of James K. Polk*, IV, 136-137, 140-143.

²³ Buchanan to Mr. Voorhies, agent of the Post-Office Department in California. Moore, *Works of James Buchanan*, VIII, 211-216, esp. 213; cf. *Diary of James K. Polk*, IV, 143, 146-149.

²⁴ Thomas, *op. cit.*, 132-133.

which remained was that established by the military authority during the war. Regarding this to be a *de facto* government, and that by the presumed consent of the inhabitants it might be continued temporarily, they were advised to submit to it for the short intervening period before Congress would again assemble and could legislate on the subject.”²⁵

The same doctrine concerning the governmental power of the President was asserted also by the succeeding administration,²⁶ but there seemed to be a distinct effort on the part of the President in each case to emphasize the civil rather than the military authority of the governments so recognized as existing by necessity and presumed consent. The authorities apparently believed that “at the conclusion of the war the military government became merged into a sort of *de facto* civil government.” Thus, President Polk selected General P. F. Smith as commander in California, because he was “a man of education and intelligence and possessed of much knowledge of civil government as well as of military command, and it was desirable to have such an officer in chief command in California in the present anomalous state of that country.”²⁷

During the administration of President Taylor, General Riley, then commanding officer in California, issued a proclamation (June 3, 1849), in which he sought to correct the impression that the *de facto* government was still military in character. “The military government ended with the war,” he said, “and what remains is the civil government, recognized in the existing laws of California. Although the command of the troops in this department and the administration of civil affairs in California are, by the existing laws of the country and the instructions of the President of the United States, temporarily lodged in the hands of the same individual, they are separate and distinct.”²⁸ President Fillmore likewise held that the civil and military departments in these temporary governments should be kept separate and distinct, and ordered the military governor of New

²⁵ Message of Dec. 5, 1848. Richardson, *op. cit.*, IV, 638.

²⁶ Thomas, *op. cit.*, 211.

²⁷ *Diary of James K. Polk*, IV, 149. Apparently Gen. Smith never acted as civil governor, however, but only as the senior commanding officer for a short time. Thomas, *op. cit.*, 212.

²⁸ Thomas, *op. cit.*, 211-212.

Mexico not to interfere with civil and political affairs. "Temporary departure from this principle may be required occasionally, but it should close with the passing of the necessity. No necessity now seems to exist in New Mexico."²⁹

While the President himself in these early cases based his claim to temporary governmental power upon the doctrine of necessity and the presumed consent of the people rather than upon his "war powers," the Supreme Court seemed to take the view that the war powers might continue to be the basis for the exercise of such governmental power even after the conclusion of peace. The Court held that the restoration of peace did not, as a matter of course, terminate a military government established over conquered territory, but that an inference that it was to continue subsequent to the conclusion of peace arose from the failure of the President or Congress to dissolve it. It therefore sustained the right of the President, in the exercise of his powers as Commander-in-Chief, not only to establish governments over conquered territory, but also to continue these governments in existence after the termination of the war, until Congress should act.³⁰

Whether acting as civil or military governor, however, the military commander, as the President's most immediate representative, apparently may exercise as absolute powers in these *de facto* governments as in the military governments during the war-time occupation.³¹ In New Mexico, Governor Vigil continued in office as civil governor for some time after the ratification of the treaty of peace, but Colonel John Price, the military commander, exercised the real authority. He approved, by special order, the acts passed by the legislature elected under Kearney's organic law, and even abolished the offices named in the statutes (secretary, district attorney, and marshal).³² Colonel John Munroe, when he became military commander in New Mexico, assumed both the title and functions of "civil and military governor," and continued to act as such until New Mexico became a territory in 1851.³³ Likewise in California, the mili-

²⁹ Thomas, *op. cit.*, 146.

³⁰ *Cross v. Harrison*, 16 How., 164, 190, 193, 195 (1853); *Leitensdorfer v. Webb*, 20 How., 176, 178 (1857).

³¹ *Cf. supra*, ch. IX.

³² Thomas, *op. cit.*, 129; *cf. supra*, 161.

³³ Thomas, *op. cit.*, 147.

tary commander issued orders and decrees having the force of law; appointed special tribunals; defined the jurisdiction of the courts; organized a supreme court; appointed and removed officials; and, finally, ordered an election for delegates to a constitutional convention, submitted the constitution to the people, and declared it ordained and established nearly a year before the state was actually admitted by Congress.³⁴

In the case of the territories acquired as a result of the Spanish-American War, Congress likewise failed to make immediate provision for their government, and the President therefore continued to exercise all the powers of government over those territories for some considerable time after the definitive conclusion of peace with Spain. Thus, in Porto Rico the military government instituted on October 18, 1898, continued to operate under the sole authority of the President until May 1, 1900, when it was superseded by the civil government established under the provisions of the Foraker Act.³⁵ The military governor, during that period, exercised absolute power over the affairs of the island, maintaining law and order, reorganizing the judiciary, reforming the criminal procedure, providing a new system of taxation, and gradually introducing free and self-governing institutions.³⁶ In the words of a native writer, the military governor, as the representative of the President, "had absolute and complete control, not only over the army, but also over the civil population of the island, and whatever orders he saw fit to issue had the force of law."³⁷

³⁴ Thomas, *op. cit.*, 229-234, 264-265, 269, 273-275. Gen. Riley yielded his authority on Dec. 20, 1849, to Peter Burnett, the governor elected under this constitution, altho California was not admitted till Sept. 9, 1850.

³⁶ See Rowe, *The United States and Porto Rico*, 118-128, 190-191, 206-208.

³⁷ Pedro Capo-Rodriguez, in *Am. Jour. Int. Law*, IX, 904. In connection with the transfer of the government from the military to the civil authorities, there occurred an interesting illustration of the power of the military governor to meet an extraordinary situation. The civil officials provided for in the Foraker Act not having all been able to qualify by the time set for the transfer, and the military officers being forbidden by statute to hold civil office, the military governor on April 30 simply reorganized the military government so as to conform to the plan of the Foraker Act and appointed civilians to fill the offices until those selected by the President could qualify. See Rowe, *op. cit.*, 134-136; Thomas, *op. cit.*, 310.

Cuba, tho not ceded to the United States by the treaty of peace, was likewise kept under military occupation from the time of its seizure in 1898 until the inauguration of the republic on May 20, 1902; and during that time the President, through the Secretary of War and the military governor, administered the affairs of that island at his discretion. The suffrage qualifications were determined upon by "general agreement" of the military governor with "leading Cubans," while election laws and other statutes were promulgated, and the self-governing powers of the municipal governments were enlarged or the municipalities suppressed altogether by military order.³⁸ Finally, when the Executive deemed the time ripe for complete self-government, the military governor summoned a constitutional convention, determined the number and distribution of delegates, carefully instructed them as to their duties,³⁹ and saw to it that the provisions suggested by the Secretary of War as the basis for the future relations between Cuba and the United States,⁴⁰ were adopted by the convention.⁴¹ He also passed upon the

³⁸ Of the 138 municipalities in Cuba, 56 were suppressed "on the ground that they had neither the resources nor population sufficient to maintain a well organized municipality." Gen. Leonard Wood, "The Military Government of Cuba," *Ann. Am. Acad.*, XXI, 160-161.

³⁹ See order of July 25, 1900, calling the election for delegates; also the opening statement of the military governor to the convention, Nov. 5, 1900, in which he said: "Under the order pursuant to which you have been elected and convened you have no duty and no authority to take part in the present government of the island. Your powers are strictly limited by the terms of that order." Root, *Military and Colonial Policy of the United States*, 195, 196.

⁴⁰ Instructions of Secretary of War Root to Maj. Gen. Wood, Feb. 9, 1901. Root, *op. cit.*, 208-212. With regard to these provisions, Secretary Root instructed Maj. Gen. Wood as follows: "These provisions may not, it is true, prove to be in accord with the conclusions which Congress may ultimately reach when that body comes to consider the subject, but as, until Congress has acted, the Executive must necessarily within its own sphere be controlled by its own judgment, you should be guided by the views above expressed." *Ibid.*, 212. These provisions were, however, embodied in the famous Platt Amendment to the Act of Mar. 2, 1901. 31 *Stat. at L.*, 895, 897.

⁴¹ "On receipt of the instructions by cable I immediately assembled the Committee on Relations to Exist between Cuba and the United States and made known to them the five articles or provisions which, in the opinion of the Executive branch of the Government, represent the wishes of the Uni-

constitution adopted by this convention, and not before it had been treated by him "as an acceptable basis for the formation of the new government" was the transfer to that new government permitted to take place.⁴² In effect, the President not only exercised all the powers of government over the island of Cuba while it was under military occupation, but himself determined when and under what conditions such military occupation should cease and the troops and authority of the United States be withdrawn, the assumption of this authority being upheld by the Supreme Court as a legitimate function of the "political branch" of the Government, in this case the Executive.⁴³

In the Philippines, the President likewise carried on the government for about two years after the definitive conclusion of peace, "untrammelled or unaided by any word from Congress." Altho Secretary of War Root announced that all formal and open resistance to the authority of the United States had terminated in the spring of 1900,⁴⁴ President McKinley, by virtue of his authority as Commander-in-Chief,⁴⁵ continued the military governor as the executive authority in the islands, but vested the legislative power in a civilian Commission.⁴⁶ He outlined the duties of this Commission and the general policy towards the Philippines in elaborate instructions, which came to be considered the "organic act of the Philippines,"⁴⁷ and under

ted States in all that pertains to the proposed relations between the Government of the United States and the people of Cuba. I was particularly careful to impress upon them that Congress might in its wisdom insist upon different conditions or relations, but that the proposition submitted embodied those which in the opinion of the Executive branch of the Government should exist and that they were the only ones which they could at present consider." Maj. Gen. Wood to Secretary of War Root, Feb. 19, 1901. Root, *op. cit.*, 186.

⁴² *Ibid.*, 215.

⁴³ *Neely v. Henkel*, 180 U. S., 109, 124 (1901).

⁴⁴ Root, *op. cit.*, 238.

⁴⁵ "The sole power which the President was exercising in the Philippine Islands was a military power derived from his authority under the Constitution as Commander-in-Chief of the Army and Navy." *Ibid.*, 252, 295.

⁴⁶ The second Philippine Commission, appointed Mar. 16, 1900, and composed of William H. Taft, Dean C. Worcester, Luke E. Wright, Henry C. Ide, and Bernard Moses. For the first Commission, see *supra*, 157, note 21.

⁴⁷ Instructions of Apr. 7, 1900. Root, *op. cit.*, 287-294.

which more than 400 laws were enacted "by authority of the President of the United States" and subject only to the approval of the Secretary of War.⁴⁸

In 1901, however, the President was given express authority by Congress to govern the Philippines temporarily,⁴⁹ and was thus no longer forced to base his actions on his "war powers." Under this new authority, the Philippine Commission was continued as before, but the military and civil authority in the islands were still further separated, the military governor being relieved of all his civil duties, and the president of the Commission, Mr. Taft, being appointed civil governor, with power to exercise the executive authority in civil affairs heretofore exercised by the military governor.⁵⁰ The organization of separate executive departments and the creation of the office of vice-governor, were further steps in the development of civil government undertaken by the President by virtue of his general power as Chief Executive and the authority vested in him by Congress.⁵¹

Finally, the last insurgent leaders having surrendered in April, 1902,⁵² and the Philippine Commission created by the President having been given express legislative sanction and authority,⁵³ the President, on July 4, 1902, terminated altogether the office of military governor in the Philippines, made the military forces subject to the call of the civil authorities "for the

⁴⁸ Root, *op. cit.*, 294-295. "While the President vested and could vest in it no greater legislative authority than the military commander previously held, it has exercised that authority in accordance with legislative forms." *Ibid.*, 254.

⁴⁹ By the so-called Spooner Amendment to the Act of Mar. 2, 1901. 31 *Stat. at L.*, 895, 910.

⁵⁰ See order of June 21, 1901. Root, *op. cit.*, 262. Taft was inaugurated civil governor on July 4, 1901. On the same day Maj. Gen. Chaffee succeeded Maj. Gen. MacArthur as military governor, but with duties applying only to the unpacified regions of the Philippines.

⁵¹ *Ibid.*, 262-287. Luke E. Wright was appointed vice-governor, the order reading "by virtue of the authority vested in me as President of the United States." *Ibid.*, 264.

⁵² *Ibid.*, 316-317.

⁵³ Philippine Government Act of July 1, 1902. 32 *Stat. at L.*, 691. From this time the laws passed by the Philippine Commission were enacted "by authority of the United States," instead of "by authority of the President." Root, *op. cit.*, 295.

maintenance of law and order and the enforcement of their authority,"⁵⁴ and thus, in the words of Secretary Root, "a complete system of civil government, built up under the authority of the President, was in operation, ready to go on under the authority of Congress."⁵⁵

In other matters, also, the President may be said to have considerable power with regard to reconstruction after war. Several of the most important war enactments of Congress, conferring large powers upon the President during the recent war with Germany and Austria-Hungary, show that Congress contemplated a period of reconstruction during which the President might continue to exercise those war powers and gradually bring about an adjustment to the normal conditions of peace.

Thus, by the terms of the Emergency Shipping Fund Act and of the Overman Act, the President was expressly authorized to exercise the powers therein granted for a period of six months after the termination of the war by the proclamation of a final treaty of peace; while, by the Railway Control Act, he was empowered to continue his control of the railroads for a period of one year and nine months after that event.⁵⁶ The long delay in securing the final termination of the state of war made the armistice period virtually a period of reconstruction, during which President Wilson exercised his war powers as he deemed such exercise necessary to bring about the readjustment to normal conditions. The control of the railroads was thus continued until March 1, 1920, frankly not as a war measure, but "to render an adequate and convenient transportation service at reasonable cost."⁵⁷

Similarly, the President revived and exercised his war powers under the Food and Fuel Control Act at various times during this reconstruction period. Thus, some of the war-time food restrictions, which had been lifted shortly after the signing of the armistice, were revived about a year later, and the powers of the Food Administrator transferred by executive order to the At-

⁵⁴ Order of July 4, 1902. Root, *op. cit.*, 317-318.

⁵⁵ *Ibid.*, 318.

⁵⁶ Acts of June 15, 1917; Mar. 21, 1918 (Sec. 14); May 20, 1918 (Sec. 1). Wigmore, *Source-Book of Military Law and War-Time Legislation*, 484, 583, 586.

⁵⁷ Statement of Director General Hines. *Supra*, 216, note 78.

torney-General in an attempt to avert a sugar famine and lower the high cost of living.⁵⁸ The war-time powers of the Fuel Administration were likewise revived by executive order of October 30, 1919, and exercised to meet the situation caused by the coal strike of that time, and later (December 10), in that connection, virtually transferred to a wage commission of three men.⁵⁹ By executive order of February 28, 1920, the President again formally continued the Fuel Administration, "because of the present emergency, and in order to insure an adequate supply and equitable distribution, and to facilitate the movement, and to prevent locally or generally, scarcity of coal;" and vested its powers in a commission of four men.⁶⁰ Finally, only a month later (April 1), President Wilson accepted and affirmed the majority report of the commission appointed in December to fix miner's wages, and at the same time removed all governmental control over the fuel industry, except as to export coal.⁶¹

The exercise of these war powers by President Wilson is in every instance clearly warranted by the fact of the continuance of the state of war. However, but for the unusual and unexpected delay in terminating that state of war, these same problems and situations would have arisen during a time of technical as well as virtual peace, and they seem to demonstrate the necessity for an extension of the President's war powers into the period of reconstruction and readjustment, in order to meet effectively just such problems that arise out of war conditions. Except in the extraordinary cases mentioned, where the courts have held that necessity and the failure of Congress to act are a sufficient justification, the exercise of such power is dependent upon definite statutory authority. The grant of such authority during the recent war is likely to have set a precedent that will be followed without much question in case of similar emergencies in the future.

⁵⁸ *N. Y. Times*, Nov. 22, 1919; *cf. supra*, 206-207.

⁵⁹ *Supra*, 207-208; see statement of the former Fuel Administrator, Dr. Garfield, before the Senate Committee on Interstate Commerce, Dec. 13, 1919. *N. Y. Times Current Hist. Mag.*, XI, Pt. 2, 30 (Jan., 1920). The commission was composed of Henry M. Robinson, John P. White, and Rembrandt Peale.

⁶⁰ *N. Y. Times*, Feb. 29, 1920. This commission was composed of A. W. Howe, Rembrandt Peale, F. M. Whittacker, and J. F. Fisher.

⁶¹ See announcement in *United States Bulletin*, Mar. 29, 1920.

The exercise of war powers during a period of reconstruction cannot be a source of danger, since it is always subject to a check by Congress. In no case can it be said that the President has any absolute powers with regard to reconstruction problems, as he has with regard to the actual conduct of the war. It has been noted that any powers in this respect may be exercised by the President only because of the failure of Congress to act, or by virtue of express statutory authority. Hence, Congress may at any time check any undue exercise of Executive power, either by taking definite action itself in the one case or by repealing its grant of power in the other.

CHAPTER XVI

CONCLUSION

In summing up the results of this study, it may be noted again that the war powers of the President are derived principally from the Constitution. There is only one clause in that instrument, however, which expressly confers upon the President any power relating directly to war, namely, the clause which makes him Commander-in-Chief of the army and navy of the United States and of the militia of the several states when called into the actual service of the United States. Even the powers of the President as Commander-in-Chief are undefined in the Constitution, and hence it has been necessary to determine them more exactly by reference to international law and practise, to the statutes of the United States, to custom and usage, and to authoritative opinion.

However, the Constitution vests in the President other powers and duties which do not necessarily or primarily imply the existence of war for their exercise, but which may have a close relation to the initiation and conduct of war, and must therefore be considered in this discussion. The most important of these are the powers of the President with regard to foreign relations and the powers that may be derived from his position as the Chief Executive of the nation. The scope of these powers is likewise undefined in the Constitution, and must again be determined through necessary implication and authoritative interpretation. Other powers of the President that have been noted as bearing upon the conduct of war are his powers of appointment and removal, his power of pardon, and his power and influence with regard to legislation.

Again, other clauses of the Constitution, while not expressly conferring any power upon the President, have been taken into account because they may, by necessary implication, add to his

war powers. These are particularly the clauses which relate to the suspension of the writ of habeas corpus, and guarantee to the states a republican form of government and protection from invasion, insurrection and domestic violence.¹ Those clauses of the Constitution which confer powers relating to war expressly upon Congress have also been taken into consideration.

From our study of these express powers, as interpreted and applied in the various emergencies that have arisen, it may be said, in the first place, that the President, through his control of foreign relations, his power as Commander-in-Chief, and his influence and authority as Chief Executive, may virtually compel or prevent a war, at his discretion. He may very largely influence a declaration of war by Congress, and he may even begin a "defensive" war without such a declaration.

In the second place, it is the President, not Congress, who wages war, his military powers as Commander-in-Chief making him supreme in that respect and solely responsible for the actual conduct of war. His constitutional powers in this regard are customarily supplemented with considerable statutory authority, so that he has large powers with regard to raising and organizing the armed forces; he directs and controls all military operations; he exercises complete powers of military jurisdiction; and he establishes and carries on military government—in fact, when a war has been declared or begun, the President may do practically anything, in a military sense, that he deems necessary to carry on that war to a successful conclusion, subject only to the rules of civilized warfare.

Thirdly, the civil powers of the President are greatly increased in time of war over those powers in time of peace. Principally by virtue of statutory authority, but in part also by virtue of his express constitutional power of appointment, and his implied powers of removal and direction, together with his authority as Commander-in-Chief, the President, during such a period of emergency, is vested with almost complete control of the administrative machinery of the government; he exercises extensive powers of police control and supervision over individual action and opinion; and he may even, as in the recent World War, practically control the economic resources of the country.

¹ Cf. *Supra*, 20, notes 34-36.

In the fourth place, the President, as Commander-in-Chief, determines when and upon what conditions hostilities are to cease; and, since a treaty of peace is the only constitutional method provided for terminating a war on the part of the United States, he may also, by virtue of his treaty-making powers, very largely determine the definitive conditions of peace and the time for the final termination of the state of war.

Finally, it has been pointed out that the President may, in the absence of congressional action, provide for and carry on the government of territory that may have been acquired as a result of war, and in other ways exercise certain of his war powers during the period of reconstruction following war, in order to meet extraordinary situations that may arise during such a period, and to bring about a gradual readjustment to the normal conditions of peace.

At least one definite conclusion can be drawn from this study, namely, that the so-called "war powers" of the Executive constitute no isolated group of powers derived from a single source, but that they are intimately connected with and indeed derived from practically every phase of the President's authority. In general, the war powers of the President cannot be precisely defined, but must remain somewhat vague and uncertain. "The Constitution," says President Wilson, "is not a mere lawyers' document: it is a vehicle of life, and its spirit is always the spirit of the age."² That statement is particularly true of that portion of the Constitution dealing with the war powers. The exigencies and circumstances of war can never be foreseen or provided against in advance, to any appreciable extent. Hence, the interpretation of what may actually be included within the war powers depends very largely on the gravity of the particular occasion for their exercise and the peculiar necessities that arise in connection.

Thus it was, for example, that the power to arm merchant ships in defense was first asserted by President Adams as the prerogative of the Executive, under the stress of the troubles with France in 1798. Likewise, the power of the Executive with regard to military government in occupied territory was firmly established as a part of American constitutional law by Presi-

² *Constitutional Government in the United States*, 69.

dent Polk, because of the necessities of the war with Mexico. Under President Lincoln and the stress of civil war were developed especially the powers of censorship and arbitrary arrest, and of military government over territory within the United States; while under President Wilson, probably the control exercised by the Executive over the administrative machinery of the government and the economic resources of the country are the outstanding features of the war powers, as exercised during the recent World War.

Clearly, the tendency has been towards a great increase in the war powers of the Executive as compared with those of Congress, a tendency quite inevitable when one considers the growing complexity of war, with its consequent greater need for singleness of direction, unity of command, and the coördination of every resource of the nation. On the other hand, there is also a tendency to pay more attention to constitutional forms in bringing about this necessary concentration of power, rather than to rely upon an arbitrary exercise of power when the occasion may demand. Thus, while President Wilson undoubtedly exercised a vastly greater power during the recent World War than did President Lincoln during the Civil War, he was careful to consult with Congress almost continuously during the war, and to secure express authority from that body in almost every case where there might be any doubt as to his own power to act without such authority; while President Lincoln, in cases of doubtful authority and even of undoubted lack of authority, such as increasing the regular armed forces, suspending the writ of habeas corpus, and issuing the emancipation proclamation, usually acted first and secured the sanction of law afterwards, if at all.

Altho, as has been noted, many of the President's war powers are derived from express statutory grants rather than directly from the Constitution, and are therefore subject to modification at the discretion of Congress, it may safely be assumed that powers thus granted will, upon occasion, be granted again with more readiness, the necessity for such exercise of power having been too clearly demonstrated in the past. It is probable, for example, that Congress would not hesitate, in case of a future war of similar importance, to vest the President immediately with the powers exercised by President Wilson under the Food and Fuel

Control Act, the Railway Control Act, or the Trading with the Enemy Act. A precedent of centralization of power and concentration of effort in time of war is not apt to be ignored, but, on the other hand, is more liable to be accepted as a principle to be followed in the future, if occasion arises. It may be noted here that, in the parliamentary governments of Europe, such as Great Britain, where the direction of war is vested in a Cabinet of several members rather than in a single Executive, the tendency, as shown especially during the recent World War, has been distinctly towards a concentration of the war powers in the hands of a smaller group, approaching singleness of control. In the United States, the experiences of a multiple direction of war through the activities of the Congress during the Revolution and of the Joint Committee during the Civil War, have not been forgotten, but were sufficient to prevent the institution, during the recent war, of any similar checks on single Executive authority.

While the President, in critical times, thus becomes practically a dictator, that does not necessarily mean a disregard of the principles of constitutional government nor require further limitations of his war powers. One of the foremost students of contemporary American politics says that the ability to act promptly and energetically in the presence of emergency being of paramount importance, "no government can survive that excludes dictatorship when the life of the nation is at stake," and he points out that the real difference between a despotism and constitutional government lies in the location of responsibility rather than in the limitation of power.³

Certainly the tendency in the United States has been towards the concentration of the war powers in the hands of the Executive. More and more, however, has that been done by express legal sanction; and more and more is the responsibility for anything in the way of executive action being definitely located in the President, so that, at the most, the President may be said to be in time of war, a "constitutional dictator." Even so, the authority of the Executive under his war powers is so extensive that one can only repeat the words of James Bryce when he wrote about the President that "when foreign affairs

³ H. J. Ford, "The Growth of Dictatorship," in *Atlantic Monthly*, CXXI, 632-640 (May, 1918), esp. 634.

become critical, or when disorders within the Union require his intervention, . . . everything may depend on his judgment, his courage, and his hearty loyalty to the principles of the Constitution.''⁴

⁴ *American Commonwealth*, I, 67.

BIBLIOGRAPHY

I. SOURCE MATERIAL

1. *Official Documents*

American State Papers. Documents, Legislative and Executive, of the Congress of the United States (1789-1838).

Annals of the Congress of the United States (1789-1824).

Congressional Debates. Register of Debates in Congress (1824-1837).

Congressional Globe, containing the Debates and Proceedings; (1833-1873).

Congressional Record, containing the Proceedings and Debates (1873-).

Digest of Opinions of the Judge-Advocates General of the Army (Revised edition, 1901). War Department Document No. 137.

ELLIOT, JONATHAN, *Debates in the several State Conventions on the Adoption of the Federal Constitution, . . . together with the Journal of the Federal Convention.* 5 vols. Washington. 1866.

Emergency Legislation passed prior to December, 1917, dealing with the Control and Taking of Private Property for the Public Use, Benefit, or Welfare. . . . Collected, annotated, and indexed under direction of the Attorney-General by J. Reuben Clarke, Jr. Washington. 1918.

Foreign Relations of the United States. Papers relating to the, (1870-).

Journals of the Continental Congress, 1774-1789. Edited by W. C. Ford and Gaillard Hunt. 23 vols. Washington. 1904-1914.

MAGOON, C. E., *Reports on the Law of Civil Government in Territory Subject to Military Occupation by the Military Forces of the United States.* Washington. 1902.

Manual for Courts-Martial, Courts of Inquiry, and of Other Pro-

- cedure under Military Law*. Corrected to April 15, 1917. War Department Document No. 560.
- MOORE, JOHN BASSETT, *A Digest of International Law as embodied . . . especially in Documents . . . of the United States*. 8 vols. Washington. 1906.
- Official Bulletin* (later *Official U. S. Bulletin*). Published daily by Committee on Public Information, Washington. (May 10, 1917 — March 31, 1919).
- Official Opinions of the Attorneys-General of the United States*. (1791-1916).
- Regulations for the Army of the United States, 1913*. Corrected to April 15, 1917. War Department Document No. 454.
- RICHARDSON, J. D., *A Compilation of the Messages and Papers of the Presidents*. 10 vols. Washington. 1896-1899.
- Statutes at Large of the United States of America* (1789-).
- SUPREME COURT OF THE UNITED STATES, *Reports* (1790-).
- United States at War, The: Organizations and Literature*. Compiled under the direction of H. H. B. Meyer, Chief Bibliographer of the Library of Congress. Washington. 1917.
- War Cyclopedia*. A Handbook for Ready Reference on the Great War. Edited under auspices of Committee on Public Information, by F. L. Paxson, E. S. Corwin, S. B. Harding. (1st edition). Washington. 1918.

2. Unofficial Collections and Writings

- ADAMS, CHARLES FRANCIS, editor. *The Life and Works of John Adams*. 10 vols. Boston. 1850-1856.
- ADAMS, CHARLES FRANCIS, editor. *Memoirs of John Quincy Adams*. 12 vols. Philadelphia. 1874-1877.
- BENTON, THOMAS H., *Abridgment of the Debates of Congress, from 1789-1856*. 16 vols. New York. 1857-1861.
- Digest of the United States Supreme Court Reports*. 6 vols. Rochester. 1908.
- EMERY, J. A., AND WILLIAMS, N. B., *Governmental War Agencies Affecting Business* (2nd edition). Prepared for the National Association of Manufacturers. New York. 1918.
- FARRAND, MAX, editor. *The Records of the Federal Convention of 1787*. 3 vols. New Haven. 1911.

- FLEMING, W. L., *Documentary History of Reconstruction*. 2 vols. Cleveland. 1906.
- FORD, P. L., editor. *The Writings of Thomas Jefferson*. 10 vols. New York. 1892-1899.
- FORD, W. C., editor. *The Writings of George Washington*. 14 vols. New York. 1889.
- HAMILTON, S. M., editor. *The Writings of James Monroe*. 7 vols. New York. 1898-1903.
- HUNT, GAILLARD, editor. *The Writings of James Madison*. 9 vols. New York. 1900-1910.
- HUNT, GAILLARD, editor. *The Journal of the Debates in the Convention Which Framed the Constitution of the United States, as Recorded by James Madison*. 2 vols. New York. 1908.
- LAPSLEY, A. B., editor. *The Writings of Abraham Lincoln* (Federal edition). 8 vols. New York. 1905-1906.
- LODGE, H. C., editor. *The Works of Alexander Hamilton*. 9 vols. New York. 1885-1886.
- MCKINLEY, ALBERT E., compiler. *Collected Materials for the Study of the War*. (1st edition). Philadelphia. 1918.
- MCPHERSON, EDWARD, *The Political History of the United States of America during the Great Rebellion*. Washington. 1876.
- MACDONALD, WILLIAM, *Documentary Source Book of American History*. (New and enlarged edition). New York. 1917.
- MOORE, JOHN BASSETT, editor. *The Works of James Buchanan*. 12 vols. Philadelphia. 1908-1911.
- New York Times*. Published daily by New York Times Co. (Especially 1918 to date).
- New York Times Current History Magazine*. Published monthly by New York Times Co. (1914-).
- NICOLAY, JOHN G., AND HAY, JOHN, editors. *Complete Works of Abraham Lincoln*. 2 vols. New York. 1894.
- QUAIFE, M. M., editor. *The Diary of James K. Polk during His Presidency, 1845-1849*. With an introduction by A. C. McLaughlin. 4 vols. Chicago. 1910.
- ROOSEVELT, THEODORE, *An Autobiography*. New York. 1913.
- ROOT, ELIHU, *The Military and Colonial Policy of the United States*. Addresses and Reports collected and edited by Robert Bacon and James Brown Scott. Cambridge. 1916.
- SUMNER, CHARLES, *The Works of Charles Sumner*. 15 vols. Boston. 1874-1883.

United States Bulletin (continuation of Official U. S. Bulletin).
Published bi-weekly (later weekly) by Roger W. Babson.
Washington. (April, 1919-).

WIGMORE, JOHN H., compiler. *A Source-Book of Military Law and War-Time Legislation*. St. Paul (Minn.). 1919.

II. SECONDARY MATERIAL

1. *General Works and Treatises*

BAKER, SIR G. S., *Halleck's International Law* (4th edition). 2 vols. London. 1908.

BALDWIN, S. E., *Modern Political Institutions*. Boston. 1898.

BARTHÉLEMY, J., *Le rôle du pouvoir exécutif dans les républiques moderne*. Paris. 1906.

BASCOM, J., *Growth of Nationality in the United States*. New York. 1899.

BASSETT, J. S., *The Federalist System* (American Nation Series, vol. 11). New York. 1906.

BENTON, E. J., *International Law and Diplomacy of the Spanish-American War*. Baltimore. 1908.

BIRKHIMER, W. E., *Military Government and Martial Law*. (2nd edition). Kansas City (Mo.). 1904.

BRADFORD, G., *The Lesson of Popular Government*. 2 vols. New York. 1899.

BRYCE, JAMES, *The American Commonwealth*. (New edition, revised). 2 vols. New York. 1915-1916.

BURGESS, J. W., *Political Science and Comparative Constitutional Law*. 2 vols. Boston. 1900.

BURGESS, J. W., *The Civil War and the Constitution*. 2 vols. New York. 1901.

BUTLER, C. H., *The Treaty-Making Power of the United States*. 2 vols. New York. 1902.

CASE, NELSON, *Constitutional History of the United States*. New York. 1904.

CHADWICK, F. E., *The Relations of the United States and Spain: Diplomacy*. New York. 1909.

CHIAFFEE, ZECHARIAH, *Freedom of Speech*. New York. 1920.

CHAMBRUN, ADOLPHE DE, *The Executive Power in the United States*. Lancaster (Pa.). 1874.

- CHANNING, EDWARD, *A History of the United States*. 4 vols. New York. 1905-1917.
- CONKLING, A., *The Powers of the Executive Department of the United States, and the Political Institutions and Constitutional Law of the United States*. Albany. 1882.
- CORWIN, E. S., *The President's Control of Foreign Relations*. Princeton. 1917.
- CRANDALL, S. B., *Treaties: Their Making and Enforcement*. (2nd edition). Washington. 1916.
- CREEL, GEORGE, *How We Advertised America*. New York. 1920.
- DAVIS, GEORGE B., *A Treatise on the Military Law of the United States*. (2nd edition, revised). New York. 1912.
- DAVIS, GEORGE B., *The Elements of International Law*. (4th edition, revised by Gordon E. Sherman). New York. 1916.
- DEWEY, D. R., *National Problems*. (American Nation Series, vol. 24). New York. 1907.
- DUNNING, W. A., *Essays on the Civil War and Reconstruction*. New York. 1898.
- DUNNING, W. A., *Reconstruction: Political and Economic*. (American Nation Series, vol. 22). New York. 1907.
- FAIRLIE, J. A., *The National Administration of the United States*. New York. 1905.
- Federalist, The*. With a special introduction by Goldwin Smith. New York. 1901.
- FINLEY, J. H., AND SANDERSON, J. F., *The American Executive and Executive Methods*. New York. 1908.
- FISH, C. R., *American Diplomacy*. New York. 1915.
- FISHER, S. G., *The Trial of the Constitution*. Philadelphia. 1862.
- FORD, H. J., *The Rise and Growth of American Politics*. New York. 1900.
- FOSTER, J. W., *American Diplomacy in the Orient*. Boston. 1903.
- FOSTER, J. W., *The Practice of Diplomacy*. Boston. 1906.
- GARNER, J. W., *Reconstruction in Mississippi*. New York. 1901.
- GLENN, G., *The Army and the Law*. New York. 1918.
- GOETHALS, G. W., *Government of the Canal Zone*. Princeton. 1915.
- GOODNOW, F. J., *The Principles of the Administrative Law of the United States*. New York. 1905.

- GOODNOW, F. J., *Principles of Constitutional Government*. New York. 1916.
- HALL, W. E., *A Treatise on International Law*. (Sixth edition, edited by J. B. Atley). London. 1909.
- HOSMER, J. K., *The Appeal to Arms*. (American Nation Series, vol. 20). New York. 1907.
- HOSMER, J. K., *Outcome of the Civil War*. (American Nation Series, vol. 21). New York. 1907.
- INGERSOLL, CHARLES, *An Undelivered Speech on Executive Arrests*. Philadelphia. 1862.
- JONES, C. L., *Caribbean Interests of the United States*. New York. 1916.
- LATANÉ, J. H., *From Isolation to Leadership*. New York. 1918.
- LATANÉ, J. H., *America as a World Power*. (American Nation Series, vol. 25). New York. 1907.
- LAWRENCE, T. J., *The Principles of International Law*. (6th edition). Boston. 1910.
- LIEBER, G. N., *Remarks on the Army Regulations and Executive Regulations in General*. Washington. 1898.
- LIEBER, G. N., *The Use of the Army in Aid of the Civil Power*. Washington. 1898.
- MCCLAINE, EMLIN, *Constitutional Law in the United States*. New York. 1910.
- MCMASTER, J. B., *A History of the People of the United States from the Revolution to the Civil War*. 8 vols. New York. 1883-1913.
- MUNRO, W. B., *The Government of the United States*. New York. 1919.
- OBERHOLTZER, E. P., *A History of the United States since the Civil War*. Vol. I. New York. 1917.
- OGG, F. A., *National Progress*. (American Nation Series, vol. 27). New York. 1918.
- OGG, F. A., AND BEARD, C. A., *National Governments and the World War*. New York. 1919.
- OPPENHEIM, L., *International Law*. 2 vols. London. 1905-1906.
- PHILLIPSON, COLEMAN, *Termination of War and Treaties of Peace*. New York. 1916.
- POMEROY, J. N., *An Introduction to the Constitutional Law of the United States*. (Ninth edition, revised and enlarged, by Edmund H. Bennett). Boston. 1886.

- REEVES, J. S., *American Diplomacy under Tyler and Polk*. Baltimore. 1907.
- RHODES, J. F., *Historical Essays*. New York. 1909.
- RHODES, J. F., *History of the United States from the Compromise of 1850*. 8 vols. New York. 1893-1919.
- ROWE, L. S., *The United States and Porto Rico*. New York. 1904.
- STORY, J., *Commentaries on the Constitution of the United States*. (4th edition). 2 vols. Boston. 1873.
- SCHOULER, JAMES, *Constitutional Studies, State and Federal*. New York. 1904.
- TAFT, W. H., *Our Chief Magistrate and His Powers*. New York. 1916.
- THOMAS, D. Y., *A History of Military Government in Newly Acquired Territory of the United States*. (Columbia University Studies in History, Economics, and Public Law, vol. 20, no. 2). New York. 1904.
- UPDYKE, F. A., *The Diplomacy of the War of 1812*. Baltimore, 1915.
- UPTON, EMORY, *The Military Policy of the United States*. Washington. 1911.
- VON HOLST, H., *The Constitutional Law of the United States of America*. Translated by Alfred Bishop Mason. Chicago. 1887.
- WATKINS, G. S., *Labor Problems and Labor Administration in the United States during the World War*. (University of Illinois Studies in the Social Sciences, vol. 8, nos. 3 and 4). Urbana, Ill. 1920.
- WATSON, D. K., *The Constitution of the United States; its History, Application and Construction*. 2 vols. Chicago. 1910.
- WHITING, W., *War Powers under the Constitution of the United States*. (43d edition). Boston. 1871.
- WILLOUGHBY, W. F., *Government Organization in War Time and After*. New York. 1919.
- WILLOUGHBY, W. W., *The Constitutional Law of the United States*. 2 vols. New York. 1910.
- WILSON, WOODROW, *Constitutional Government in the United States*. New York. 1911.
- WINTHROP, W., *An Abridgment of Military Law*. (2nd edition). New York. 1893.
- YOUNG, J. T., *The New American Government and Its Work*. New York. 1915.

2. *Special Articles*

- ANDERSON, FRANK M., "The Enforcement of the Alien and Sedition Laws." *Annual Report, American Historical Association*, 1912, pp. 115-126.
- ANSELL, S. T., "Military Justice." *Cornell Law Quarterly*, vol. 5, pp. 1-17 (November, 1919).
- BALDWIN, S. E., "The Entry of the United States into World Politics as One of the Great Powers." *Yale Review*, vol. 9, pp. 399-418 (February, 1901).
- BALDWIN, S. E., "The Share of the President of the United States in a Declaration of War." *American Journal of International Law*, vol. 12, pp. 1-14 (January, 1918).
- BALLANTINE, H. W., "Unconstitutional Claims of Military Authority." *Yale Law Journal*, vol. 24, pp. 189-216 (January, 1915).
- BALLANTINE, H. W., "The Effect of War on Constitutional Liberty." *Case and Comment*, vol. 24, pp. 3-7 (June, 1917).
- BALLANTINE, H. W., "Constitutional Limitations on the War Power." *California Law Review*, vol. 6, pp. 134-141 (January, 1918).
- BOGART, E. L., "Economic Organization for War." *American Political Science Review*, vol. 14, pp. 587-606 (November, 1920).
- BOGERT, G. G., "Courts-Martial: Criticisms and Proposed Reforms." *Cornell Law Quarterly*, vol. 5, pp. 18-47 (November, 1919).
- BROWN, P. M., "American Diplomacy in Central America." *American Political Science Review*, vol. 6, supplement, pp. 152-163.
- BROWN, P. M., "American Intervention in Central America." *American Journal of Race Development*, vol. 4, pp. 409-426.
- CAPÓ-RODRÍGUEZ, PEDRO, "The Relations between the United States and Porto Rico." *American Journal of International Law*, vol. 9, pp. 883-912; vol. 10, pp. 65-76, 312-327.
- CARPENTER, A. H., "Military Government of Southern Territory, 1861-1865." *Annual Report, American Historical Association*, 1900, vol. 1, pp. 465-498.
- CORWIN, E. S., "The Power of Congress to Declare Peace." *Michigan Law Review*, vol. 18, pp. 669-675 (May, 1920).

- DAVIS, G. B., "The Amelioration of the Rules of Warfare on Land." *American Journal of International Law*, vol. 2, pp. 63-77.
- DUNNING, W. A., "The Constitution of the United States in Civil War." *Political Science Quarterly*, vol. 1, pp. 163-198.
- DUNNING, W. A., "The War Power of the President." *The New Republic*, vol. 11, pp. 76-79 (May 19, 1917).
- FAIRLIE, J. A., "American War Measures." *Journal of Comparative Legislation and International Law*, vol. 18, pp. 90-100 (April, 1918).
- FAIRLIE, J. A., "Administrative Legislation." *Michigan Law Review*, vol. 18, pp. 181-200 (January, 1920).
- FISHER, S. G., "The Suspension of Habeas Corpus during the War of the Rebellion." *Political Science Quarterly*, vol. 3, pp. 454-488.
- FLETCHER, H. J., "The Civilian and the War Power." *Minnesota Law Review*, vol. 2, pp. 110-131 (January, 1918).
- FORD, H. J., "The War and the Constitution." *Atlantic Monthly*, vol. 120, pp. 485-494 (October, 1917).
- FORD, H. J., "The Growth of Dictatorship." *Atlantic Monthly*, vol. 121, pp. 632-640 (May, 1918).
- GARNER, J. W., "Le pouvoir exécutif en temps de guerre aux Etats-Unis." *Revue du Droit Public et de la Science Politique*, vol. 35, pp. 5-62 (Janvier-Mars, 1918).
- GARNER, J. W., "The Treatment of Enemy Aliens." *American Journal of International Law*, vol. 13, pp. 22-59 (January, 1919).
- HANEY, L. H., "Price-Fixing in the United States during the War." *Political Science Quarterly*, vol. 34, pp. 104-126 (March, 1919).
- HITCHCOCK, C. N., "The War Industries Board: Its Development, Organization, and Functions." *Journal of Political Economy*, vol. 26, pp. 545-566 (June, 1918).
- HUGHES, C. E., "War Powers under the Constitution." *Central Law Journal*, vol. 85, pp. 206-214 (September 21, 1917).
- LEAKE, J. M., "The Conflict over Coördination." *American Political Science Review*, vol. 12, pp. 365-380 (August, 1918).
- McKINNEY, H., "Treason under the Constitution of the United States." *Illinois Law Review*, vol. 12, pp. 381-402 (January, 1918).

- MARSHALL, L. C., "The War Labor Program and Its Administration." *Journal of Political Economy*, vol. 26, pp. 425-460 (May, 1918).
- MATHEWS, J. M., "The League of Nations and the Constitution." *Michigan Law Review*, vol. 18, pp. 378-389 (March, 1920).
- MOORE, JOHN BASSETT, "Treaties and Executive Agreements." *Political Science Quarterly*, vol. 20, pp. 385-420 (September, 1905).
- MORGAN, E. M., "The Existing Court-Martial System and the Ansell Army Articles." *Yale Law Journal*, vol. 29, pp. 52-74 (November, 1919).
- O'DONNELL, T. J., "Military Censorship and the Freedom of the Press." *Virginia Law Review*, vol. 5, pp. 178-189 (December, 1917).
- PAXSON, F. L., "The American War Government, 1917-1918." *American Historical Review*, vol. 26, pp. 54-76 (October, 1920).
- PIERSON, W. W., "The Committee on the Conduct of the Civil War." *American Historical Review*, vol. 23, pp. 550-576 (April, 1918).
- RANDALL, J. G., "The Newspaper Problem in Its Bearing upon Military Secrecy during the Civil War." *American Historical Review*, vol. 23, pp. 303-323 (January, 1918).
- ROGERS, LINDSAY, "Freedom of the Press in the United States." *Contemporary Review*, vol. 114, pp. 177-183 (August, 1918).
- SARGENT, NOEL, "Press Censorship." *Central Law Journal*, vol. 85, pp. 60-68 (July 27, 1917).
- SIGNOREL, JEAN, "Le pouvoir exécutif en temps de guerre. Étude de législation comparée (*suite*).¹" *Revue Générale d'Administration*, vol. 43, pt. 2, pp. 129-154; pt. 3, pp. 5-37 (July-August, September-October, 1920).
- SMITH, W. G., "War Legislation." *Central Law Journal*, vol. 86, pp. 116-123 (February 15, 1918).
- WALSH, T. J., "War Powers of the President." *Case and Comment*, vol. 24, pp. 279-289 (September, 1917).
- WOOD, LEONARD, "The Military Government of Cuba." *Annals of the American Academy of Political and Social Science*, vol. 21, pp. 153-182.
- WOOLSEY, T. S., "The Beginnings of War." *Proceedings, American Political Science Association*, vol. 1, pp. 54-68.

WRIGHT, QUINCY, "Military Administration." *Report of the Efficiency and Economy Committee, State of Illinois*, 1915, pp. 867-906.

WRISTON, H. M., "Presidential Special Agents in Diplomacy." *American Political Science Review*, vol. 10, pp. 481-499.

TABLE OF CASES CITED

	PAGE
Abrams v. United States, 250 U. S., 616 (1919).....	183
Adula, The, 176 U. S., 361 (1900).....	125
Angarica v. Bayard, 127 U. S., 251 (1888).....	37
Arver v. United States, 245 U. S., 366 (1918).....	105
Bas v. Tingy, 4 Dall., 37 (1800).....	84
Bishop v. United States, 197 U. S., 334 (1905).....	142
Blake v. United States, 103 U. S., 227 (1880).....	128, 129
Bollman, Ex parte, 4 Cranch, 75 (1807).....	189
Brown v. United States, 8 Cranch, 110 (1814).....	212
Burke v. Miltenberger, 19 Wall., 519 (1873).....	164
Coleman v. Tennessee, 97 U. S., 509 (1878).....	155, 160
Commercial Cable Company v. Burleson, 255 Fed. Rep., 99 (1919).....	219
Cross v. Harrison, 16 How., 164 (1853).....	157, 160, 257
Dakota Central Telephone Company v. South Dakota, 250 U. S., 163 (1919).	219
Debs v. United States, 249 U. S., 211 (1919).....	193
Dooley v. United States, 182 U. S., 222 (1901).....	153, 160, 162
Dow v. Johnson, 100 U. S., 158 (1879).....	153, 155, 163
Fleming v. Page, 9 How., 603 (1849).....	126, 163, 224
Floyd Acceptances, The, 7 Wall., 666 (1868).....	14
Foster v. Neilson, 2 Pet., 253 (1829).....	27, 31
Frohwerk v. United States, 249 U. S., 204 (1919).....	193
Garland, Ex parte, 4 Wall., 333 (1866).....	149
Gelston v. Hoyt, 3 Wheat., 246 (1818).....	31
German Alliance Insurance Company v. Lewis, 233 U. S., 389 (1914).....	203
Grapeshot, The, 9 Wall., 129 (1869).....	157, 164
Gray v. United States, 21 Ct. of Cl., 340 (1886).....	84
Hamilton v. Dillin, 21 Wall., 73 (1874).....	209
Hamilton v. Kentucky Distilleries & Warehouse Company, 251 U. S., 146 (1919).	236
Haver v. Yaker, 9 Wall., 32 (1869).....	246
Herrera v. United States, 222 U. S., 558 (1912).....	163
Hornsby v. United States, 10 Wall., 224 (1869).....	153
Jecker v. Montgomery, 13 How., 498 (1851).....	164
Johnson v. Sayre, 158 U. S., 109 (1895).....	131
Jones v. Seward, 40 Barb. (N. Y.), 563 (1863).....	19
Jones v. United States, 137 U. S., 202 (1890).....	25, 31
Kansas v. Colorado, 206 U. S., 46 (1907).....	13
Kennett v. Chambers, 14 How., 38 (1852).....	31
Lamar v. Browne, 92 U. S., 187 (1875).....	248

	PAGE
Leitensdorfer v. Webb, 20 How., 176 (1857).....	157, 164, 257
Luther v. Borden, 7 How., 1 (1848).....	132
McCormick v. Humphrey, 27 Ind., 144 (1866).....	17
Martin v. Mott, 12 Wheat., 19 (1827).....	132, 140
Mechanics and Traders Bank v. Union Bank, 22 Wall., 276 (1874).	17, 152, 164
Merryman, Ex parte, Fed. Cases No. 9487 (1861).....	192
Miller v. United States, 11 Wall., 268 (1870).....	17, 212
Milligan, Ex parte, 4 Wall., 2 (1868).....	19, 117, 144, 146, 153, 182
Mimmac v. United States, 97 U. S., 426 (1888).....	129
Mississippi v. Johnson, 4 Wall., 475 (1869).....	117
Neagle, In re, 135 U. S., 1 (1890).....	14, 43, 50
Neely v. Henkel, 180 U. S., 109 (1901).....	154, 260
New Orleans v. Steamship Company, 20 Wall., 387 (1874).....	153, 163
Northern Pacific Railway Company v. North Dakota, 250 U. S., 135 (1919)	216
Prize Cases, 2 Black, 635 (1862).....	60, 75, 76, 125, 209
Protector, The, 12 Wall., 700 (1871).....	247, 248
Raymond v. Thomas, 91 U. S., 712 (1875).....	160
Rose v. Himely, 4 Cranch, 241 (1801).....	31
Runkle v. United States, 122 U. S., 543 (1887).....	142, 143
Salamandra Insurance Company v. New York Life Insurance Company, 254 Fed. Rep., 852 (1918).....	212
Schenck v. United States, 249 U. S., 47 (1919).....	193
Shurtleff v. United States, 189 U. S., 311 (1903).....	128
Siebold, Ex parte, 100 U. S., 371 (1879).....	43
Stata, The, 56 Fed. Rep., 505 (1893).....	32
Stewart v. Kahn, 11 Wall., 493 (1870).....	17, 251
Swaim v. United States, 165 U. S., 553 (1897).....	139
Talbot v. Johnson, 3 Dall., 133 (1795).....	60
Texas v. White, 7 Wall., 700 (1868).....	156, 251
Totten v. United States, 92 U. S., 105 (1875).....	125
Tucker v. Alexandroff, 183 U. S., 424 (1902).....	40
United States v. Eliason, 16 Pet., 291 (1842).....	21, 112
United States v. Fletcher, 148 U. S., 84 (1893).....	142
United States v. Guthrie, 17 How., 283 (1854).....	128
United States v. Hutchings, 2 Wheeler's Crim. Cases, 543.....	31
United States v. Klein, 13 Wall., 128 (1871).....	149, 150
United States v. Padelford, 9 Wall., 531 (1869).....	150
United States v. Page, 137 U. S., 673 (1891).....	142
United States v. Trumbull, 48 Fed. Rep., 99 (1891).....	32
United States v. Warfield, 170 Fed. Rep., 43 (1909).....	21
Vallandigham, Ex parte, 1 Wall., 243 (1863).....	144, 146, 147
Watts v. United States, 1 Wash. Terr., 288 (1870).....	39
Wilcox v. Jackson, 13 Pet., 498 (1839).....	21
Williams v. Suffolk Insurance Company, 13 Pet., 415 (1839).....	27, 31

INDEX

- Adams, John, President, arming of merchant vessels, 67, 81, 267; war influence, 80-84; on power to make war, 86; exercise of pardon, 149; purpose of Alien Act, 187
- Adams, John Quincy, on nature of war powers, 15, 79; peace commissioner, 238; Secretary of State, defense of Jackson, 66
- Air Service, reorganization of, 177-178
- Alabama claims, 31, 89
- Alaska, executive agreement concerning, 41; government of, 252
- Aldrich, Nelson W., Senator, on senators as treaty negotiators, 242
- Alien Act, of 1789, 186-188
- Alien Property Custodian, 172, 212, 213
- Aliens, enemy, control of in war, 184-186
- Allison, W. B., Senator, on senators as treaty negotiators, 242
- Amnesty, proclamations of, 149-150
- Ansell, S. T., Acting Judge Advocate General, opinions of, 129, 143
- Arbitrary arrest, 182, 191, 268
- Arbitration, 89, 90, 91, 92
- Armed merchant ships, 67-70, 81, 198, 267
- Armed neutrality, 70
- Armenia, use of troops in, 56
- Armistice, nature of, 232-236, 246; exercise of powers after signing of, 206, 207, 216, 218
- Army, power to raise, 101; foundation of, 102; legionary form of organization, 111-112; see also Conscription, National army, Regular army, Troops, Voluntary enlistment
- Articles of War, 138, 141
- Ashmun resolution, concerning war with Mexico, 74
- Attorney General, opinions of, on arming of merchant vessels, 69; on use of militia, 133, 134; on courts-martial, 139, 143; on military commissions, 144; on military government, 162; on suspension of habeas corpus, 190; on termination of war, 236; powers of Food Administrator transferred to, 207, 263
- Austria-Hungary, war with, 93, 95, 185, 186, 226, 234, 248, 262
- Bacon, A. O., Senator, on power to declare war, 95-96; on nature of executive office, 115, 116; on senators as treaty negotiators, 242
- Baker, Newton D., Secretary of War, use of troops in Silesia, 56; conscription, 108; Siberian expedition, 123, 125; member of Committee on Public Information, 197
- Baldwin, S. E., on Venezuela affair, 30; on declaration of war, 58, 80; on termination of war, 224, 226, 237
- Ballantine, H. W., on civil rights in war, 182
- Banks, N. P., General, military government by, 154, 161
- Barbary Powers, hostilities against, 64
- Barrier forts, in China, attack upon, 51

- Baruch, Bernard M., chairman of War Industries Board, 178, 211
- Bates, Edward, Attorney General, opinions of, on courts-martial, 143; on suspension of habeas corpus, 190
- Bayard, James, peace commissioner, 238, 240, 241
- Bayard, Thomas A., Secretary of State, executive agreement concerning fisheries question, 41
- Bent, Charles, governor of New Mexico, 158, 161
- Benton, Thomas H., Senator, on Panama Congress, 27; on inchoate interest in Texas, 47; on war with Mexico, 72; on government of California, 254
- Bill of Rights, 182
- Birkhimer, W. E., on beginning of war, 60
- Blair, Montgomery, Postmaster General, on censorship in war, 195, 196
- Bliss, Tasker H., General, 126; peace commissioner, 239
- Blockade, 74, 75, 125, 209, 234
- Borah, William E., Senator, on use of troops in Siberia, 124
- Boxer rebellion, 39, 52, 239
- Browning, O. H., Senator, on nature of war powers, 17
- Bryce, James, on power of President, 269
- Buchanan, James, Secretary of State, grievances against Mexico, 87; government of California, 255; President, protection of American interests abroad, 51
- Bulgaria, relations with, 93
- Bureau of Efficiency, 176
- Bureau of Standards, 180
- Cabinet, War, 172, 177
- Cable censorship, 200, 201
- Cable control, 219
- Calhoun, John C., Secretary of War, responsible for Jackson's occupation of Florida, 109; Senator, opposed to war with Mexico, 73
- California, military government of, 154, 155, 158, 159, 161, 254, 255, 256, 257, 258
- Canada, executive agreement concerning, 41; Fenian invasion of, 44, 89
- Caribbean, zone of, police control in, 53, 55, 56
- Cass, Lewis, Senator, favored war with Mexico, 73-74; Secretary of State, on protection of American interests abroad, 51
- Censorship, 171, 180, 194-202, 268
- Censorship Board, 171, 201
- Chamberlain, George E., Senator, proposal for War Cabinet, 172
- Chase, Salmon P., Secretary of the Treasury, organization of armed forces, 112-113; Chief-Justice, definition of military government, 153
- Chesapeake affair, 84, 85
- China, Boxer rebellion, 39, 51-52; attack upon Barrier forts, 51
- Civil Service, transfer of employees under, 177
- Civil War, blockade, 74-75, 209; raising and organization of armed forces, 104, 106, 110-111, 112-113; draft, 106, 167-168; military commissions, 144, 147; pardon, 150; congressional check on conduct, 170, 269; suspension of habeas corpus, 189, 190-192; censorship, 195-197, 268; regulation of intercourse, 208; confiscation of property, 212; control of railroads, 214; control of telegraph, 218, 219; termination, 248; reconstruction, 251
- Clay, Henry, recognition of South American provinces, 33; war influence, 85; peace commissioner, 238, 240, 241

- Clemency Board, during World War, 150
- Cleveland, Grover, President, Venezuela affair, 30, 89-90; power of recognition, 32; intervention in Colombia, 53; Cuban policy, 91
- Coast and Geodetic Survey, transfer of, 177
- Coast Guard, transfer of, 177
- Colombia, relations with, 49, 53
- Columbus raid, 67
- Commander-in-Chief, nature of powers as, 11, 17, 19, 115, 116-117, 265; executive agreements, 37, 40; military measures short of war, 43; defensive war, 59, 60, 62, 75; personal command, 115, 116, 118-120, 135-137; direction of military and naval operations, 117, 121-126, 266; appointment and dismissal of officers, 126-130; control of militia, 130-135; military jurisdiction, 139, 147; military government, 152, 153, 157, 164; war administration, 172, 174, 266; police control, 182, 186, 194, 200, 201, 202; control of economic resources, 209; termination of war, 233, 267; reconstruction, 251, 253, 257, 260
- Committee on Public Information, 172, 197-199, 201
- Communication, control of, 231, 218-219
- Confiscation Acts, 16, 150, 212
- Congress, war powers of, 16, 17, 18, 19, 58, 78, 79, 88, 95-96, 101, 117, 118, 121, 126, 127, 131, 138, 142, 149, 170, 183, 189, 191, 193, 208, 224, 226-230, 248, 251, 252, 254, 257, 264, 268
- Conscription, in the Revolution, 105; in Civil War, 106, 167-168; in World War, 107-108, 169
- Constitution, nature of executive, legislative, and judicial clauses, 11; Wilson-Roosevelt doctrine of construction, 12-14; as source of war powers, 20, 265-266; as war instrument, 182
- Convention of 1787, on power to declare war, 61, 78-79; on powers of command, 115, 119; on control of militia, 130; on power to make peace, 228-229
- Corwin, E. S., on control of foreign policy, 29, 31; on power of defense, 77; on power to declare peace, 226
- Council of National Defense, 172, 178, 204, 211, 215
- Courts-martial, 138-143, 147, 163, 190
- Creel, George, chairman of Committee on Public Information, 198, 199
- Crowninshield, B. W., Secretary of the Navy, 38
- Cuba, recognition of, 32; filibustering expeditions against, 45; difficulties concerning, 91-92; military government of, 156, 259-260
- Cullom, S. M., Senator, on senators as treaty negotiators, 241
- Cummins, A. B., Senator, on Overman Act, 174; on railway control, 215, 216
- Dalmatia, use of troops in, 56, 57
- Daniels, Josephus, Secretary of the Navy, member of Committee on Public Information, 197; on voluntary censorship, 198
- Davis, Cushman K., Senator, peace commissioner, 240
- Davis, George B., Judge Advocate General, opinion of, on use of militia, 134
- Day, William R., Secretary of State, peace commissioner, 240
- Declaration of war, 46, 58-64, 71-76, 78-80, 82-98, 104, 226, 266
- Demobilization, 234, 235, 236

- Denby, Charles, member of Philippine Commission, 157
- Devens, Charles, Attorney General, opinion on courts-martial, 139
- Dewey, George, Admiral, member of Philippine Commission, 157
- Dick Militia Act, 133
- Dictatorship, in war, 18, 19, 203, 269
- Diplomatic relations, breaking of, 35-37, 93
- Director General of Railroads, 172, 180, 215, 216
- District of Columbia, enemy aliens barred from, 186
- Draft, in Civil War, 106, 167-168; see also Conscription
- Dunning, W. A., on civil rights in war, 183
- Edge, W. E., Senator, resolution on use of troops abroad, 124; resolution for termination of war, 225
- Emancipation proclamation, 268
- Embargo, 208, 210
- Emergency Fleet Corporation, 217
- Enemy aliens, control of in war, 184-186
- Enlistment, voluntary, 101, 104, 105
- Esch-Cummins Railroad bill, 216
- Espionage Act, 150, 170, 193-194, 201, 209
- Executive agreements, nature of, 37; with Great Britain, 37-39, 41; with China, 39-40; with Mexico, 40; with Spain, 41; with Panama, 41; with Japan, 41; with Santo Domingo, 42
- Executive orders, as forms of presidential action, 20
- Executive power, nature of constitutional provision, 11; Roosevelt theory, 12-14; extent of, 14-15
- Exports Administrative Board, 171
- Exports Council, 171
- Fairlie, J. A., on nature of war powers, 20; on forms of presidential action, 20-21; on delegation of powers, 21; on war influence of President, 31
- Fall, A. B., Senator, resolution for withdrawal of recognition, 35; resolution for termination of war, 225
- Federal Trade Commission, transfer of powers, 179
- Fenian invasion, 44, 89
- Filibuster, on arming of merchant vessels, 69
- Filibustering expeditions, 45
- Fillmore, Millard, President, on control of militia, 131; powers of reconstruction, 256
- Fish, Hamilton, Secretary of State, influence for peace, 89
- Fisheries question, executive agreement concerning, 41
- Fletcher, D. U., Senator, on Overman Act, 174
- Florida, inchoate interest in, 45-46; occupation of, 65, 66; government of, 252
- Florida claims, 89
- Food control, 170, 171, 204-207, 210, 262
- Food and Fuel Control Act, 170, 205, 207, 208, 230, 262, 268
- Foraker, Joseph B., Senator, on senators as treaty negotiators, 242
- Ford, H. J., on dictatorship in war, 269
- Foreign language press, control of, 201
- Foreign policy, formulation of, 26-31
- Foreign troops, entry of, executive agreements concerning, 40-41
- Fourteen points, 234, 244
- France, difficulties with, 80, 83, 84, 103
- France, J. I., Senator, resolution for pardon of political prisoners, 151
- Freedom of speech and press, 182, 183, 192-202

- Frelinghuysen, F. T., Secretary of State, executive agreements, 40, 41
 Fremont, John C., Colonel, military governor of California, 158, 255
 Frye, William P., Senator, peace commissioner, 240
 Fuel control, 170, 171, 179, 207-208, 263
 Gallatin, Albert, on war influence of President, 82; peace commissioner, 238
 Garfield, H. A., Fuel Administrator, 207, 208, 263
 Garner, J. W., on executive power in war, 15
 Gerard, James W., Ambassador, recall of, 37
 Germany, war with, declaration of, 92, 95, 226; raising of forces during, 105, 107-108; control of aliens during, 185, 186; armistice conditions, 234; reconstruction after, 262; termination of, 225, 226, 230-231, 235-236, 248
 Goodnow, F. J., on nature of war powers, 13, 19, 167
 Grain Corporation, United States, 171, 206
 Grant, U. S., President, inchoate interest in Santo Domingo, 48; influence for peace, 88-89
 Graves, William S., Major General, commander of Siberian expedition, 122, 123
 Gray, George, Senator, peace commissioner, 240
 Great Britain, executive agreements with, 37-39, 41; relations with, 62-63, 84-86, 88-90; see also War of 1812
 Great Lakes, limitation of naval armaments on, 37
 Gregory, Thomas W., Attorney General, opinion on arming of merchant vessels, 69
 Greytown (Nicaragua), bombardment of, 50
 Griggs, John W., Attorney General, opinions of, on military government, 162; on termination of war, 236
 Habeas corpus, suspension of, 188-192, 266, 268
 Hague Convention, 61, 94, 95, 96
 Hale, Eugene, Senator, on senators as treaty negotiators, 241, 242
 Hamilton, Alexander, on power to receive and send diplomatic representatives, 35; on neutrality, 44; on power of defense, 63-64; on power of declaring war, 78, 94; on powers of command, 116, 119; on power of pardon, 148; on executive war power, 167
 Hand, Learned, Judge, on power to terminate war, 236
 Harding, Warren G., Senator, on dictatorship in war, 18
 Harrison, Benjamin, President, on appointment of officers, 127
 Hartford Convention, 132
 Hawaii, government of, 253
 Hayti, intervention in, 54
 Helvidius letter, on neutrality, 44
 Henry correspondence, 85, 86
 Henry, Patrick, on dictatorship in war, 18
 Hines, Walker D., Director General of Railroads, 216, 262
 Hitchcock, C. N., on control of industry in war, 211, 212
 Hitchcock, Gilbert M., Senator, on use of troops in Dalmatia, 57
 Hoar, George F., Senator, on appointment of senators as treaty negotiators, 241, 242
 Holmes, O. W., Justice, dissenting opinion on civil rights in war, 183
 Honduras, intervention in, 55
 Hoover, Herbert, Food Administrator, 204, 205

- Horseshoe Reef, executive agreement concerning, 38
- House, Edward M., peace commissioner, 239
- Housing Corporation, 213
- Hughes, Charles E., on direction of military movements, 121; on control of business in war, 204, 219; on power to make peace, 229; on powers of reconstruction, 250
- Ide, Henry C., member of Philippine Commission, 260
- Inchoate interest, in Florida, 45-46; in Texas, 47-48; in Santo Domingo, 48-49; in Panama Canal, 49
- Industry, control of, 204, 210-212
- International law, as limitation on war powers, 15, 17; as source of war powers, 20; control of enemy aliens, 184, 185; treatment of enemy property, 212; right of requisition, 217
- Internment, during World War, 185, 186
- Interstate Commerce Commission, 215
- Intervention, 53-57
- Jackson, Andrew, General, occupation of Florida, 65, 66, 67; raising of troops in Seminole War, 108-109; President, recognition of Texas, 33
- Jefferson, Thomas, on arming of merchant vessels, 67; on war influence of Adams, 80, 81; on suspension of habeas corpus, 189; Secretary of State, formulation of foreign policy, 26; President, power of defense, 63, 64-65; influence for peace, 84-85
- Johnson, Andrew, military governor, 153, 158; President, limitation on removal power, 128; convenes military commission, 145; exercise of pardon, 150; powers of reconstruction, 251
- Johnson, Hiram, Senator, on Siberian policy, 124
- Judge Advocate General, opinions of, 129, 134, 143
- Judicial power, constitutional limitation on, 11
- Kearney, S. W., General, military government by, 154, 155, 157, 158, 161, 163
- Knox, P. C., Senator, on nature of war powers, 16; on Overman Act, 175; peace resolution, 225, 226, 230; resolution for separation of covenant and treaty, 244
- Koszta incident, 50
- Lansing, Robert, Secretary of State, on arming of merchant vessels, 69; member of Committee on Public Information, 197; peace commissioner, 239
- Lansing-Ishii agreement, 41
- League of Nations, 224, 225, 244, 245
- Legion, as form of army organization, 111-112
- Legislative power, constitutional limitation on, 11
- Lenroot, I. L., Senator, on termination of war, 224
- Lighthouse Service, transfer of, 177
- Lincoln, Abraham, President, on nature of war powers, 16; exercise of arbitrary power, 18, 268; power of recognition, 32; blockade, 74, 125, 209; draft, 106; questionable authority, 110, 175; powers of command, 120; trial of assassins of, 144, 145; exercise of pardon, 150; military government, 158, 161, 163; suspension of habeas corpus, 190, 192; regulation of intercourse, 209; control

- of railroads, 214; powers of reconstruction, 251
- Lodge, H. C., Senator, on Fall resolution, 36; resolution for termination of war, 225, 227; control of negotiations, 245, 246
- Louisiana, government of, 252
- McAdoo, W. G., Director General of Railroads, 172, 215, 216
- McCallum, D. C., military director of railroads, 214
- McComas, J. B., Senator, on senators as treaty negotiators, 242
- McCormick, Medill, Senator, resolution on use of troops abroad, 124
- McKinley, William, President, orders military force to China, 51; war influence, 91-92; direction of military operations, 120; blockade, 125, 209; military government, 154, 156, 157, 159, 258-262; preliminary protocol, 234; appointment of peace commissioners, 239, 240; control of peace negotiations, 243
- Madison, James, on neutrality, 44; on arming of merchant vessels, 68; on war influence of Adams, 81, 83; on power of declaring war, 94; President, war influence, 85; proclamation of war, 97; use of militia in war, 132; exercise of pardon, 150; proposal for armistice, 233; appointment of peace commissioners, 238
- Maine controversy, 91
- March, Peyton C., General, 114, 126
- Marcy, W. L., Secretary of War, Koszta incident, 50; military government of New Mexico, 159, 255
- Marine Hospital Service, 177
- Marines, use of in Caribbean Zone, 55
- Marshall, John, on control of foreign relations, 25
- Martial law, 138, 143, 145, 146, 152
- Mason, William E., Representative, peace resolution, 225
- Mayes, James J., Acting Judge Advocate General, opinions of, 129
- Merchantmen, armed, 67-70, 81, 198, 267
- Mexico, Wilson's relations with, 30, 35-36, 52, 67; war with, as war of defense, 70-74; beginning of, 86-88; declaration of, 88, 95, 226; raising of forces during, 103; appointment of officers in, 126; use of militia in, 132, 133; blockade, 209; termination of, 247
- Military commissions, 138, 143-147, 163, 190
- Military governor, 155, 158, 159
- Militia, 61, 107, 130-137
- Mines, Bureau of, 179, 180
- Monroe, James, Secretary of State, armistice proposal, 233; Secretary of War, recommends conscription, 106; on control of militia, 132, 136, 137; President, power of recognition, 33; inchoate interest in Florida, 46; power of defense, 65; appointment of officers, 127; on appointment of members of Congress to foreign missions, 240
- Monroe doctrine, 30, 31, 54, 90
- Moore, John Bassett, on executive agreements, 37
- Morgan, E. M., on courts-martial, 142
- Morgan, John T., Senator, on senators as treaty negotiators, 241
- Moses, Bernard, member of Philippine Commission, 260
- Murray, William Vans, on arming of merchant vessels, 68
- National Army, 106, 113
- National Defense Act, 105, 107, 113, 132, 210
- National Guard, 107, 113

- Navy, power to provide, 101; see also Secretary of the Navy
- Negotiations, control of, 25, 31, 242-246
- Nelson, Knute, Senator, on Overman Act, 175
- Neutrality, enforcement of, 44-45, 70, 88
- New Mexico, military government of, 154, 157, 158, 159, 161, 163, 254, 255, 257
- Newspapers, control of in war, 196, 198-199, 201-202
- Nicaragua, bombardment of Greytown, 50; intervention in, 55
- Official Bulletin, 198
- Oregon question, 86
- Otis, E. S., Major General, member of Philippine Commission, 157
- Overman Act, 173-181, 231, 262
- Pacificus letter, on neutrality, 44
- Palmer, A. Mitchell, Alien Property Custodian, 213; Attorney General, opinion on power to terminate war, 236
- Panama, relations with, 41, 49, 51, 53
- Panama Canal Zone, 180, 186, 253
- Panama Congress, 27-30
- Pardon, power of, 141, 148-151
- Peace, power of Congress to declare, 224-231
- Peace commissioners, appointment of, 237-239; senators as, 240-242
- Peace negotiations, control of, 237, 242-246
- Peace resolutions, 225, 226, 227, 230
- Peace treaty, 223-225, 228-231
- Pershing, John J., General, 126, 127
- Phelps, John S., military governor of Arkansas, 158
- Philippine Commission, 156, 157, 260, 261
- Philippines, government of, 154, 156, 159, 160, 260-262; acquisition of, 234, 243
- Pierce, Franklin, President, defends bombardment of Greytown, 50
- Platt, O. H., Senator, on senators as treaty negotiators, 242
- Platt Amendment, 259
- Poindexter, Miles, Senator, on termination of war, 224, 226
- Police supervision, 53-57
- Polk, James K., President, enforcement of neutrality, 45; inchoate interest in Texas, 47-48; war influence, 70-72, 86-88; proclamation of war, 97; direction of military operations, 120, 126; exercise of pardon, 149; military government, 154, 157, 160, 268; blockade, 209; appointment of peace commissioners, 238-239; consultation with Senate, 244; powers of reconstruction, 254-256
- Pomeroy, J. N., on use of militia, 134
- Porter resolution, for termination of war, 226
- Porto Rico, government of, 156, 159, 258; acquisition of, 234
- Posse comitatus, use of army as, 43
- Postmaster General, control of wire services, 180, 219; censorship by, 195, 196, 201-202
- Preliminary protocol, 232, 234, 236
- President, source of war powers, 20; see also names of Presidents, and *passim*
- Press, control of in war, 182, 192-202
- Price control, 179, 203, 204, 205, 206, 207, 210
- Proclamations, as forms of presidential action, 20; of state of war, 97-98; of amnesty, 149-150; fixing registration days, 168; announcing enemy alien regulations, 185-186; suspending habeas corpus, 190; establishing food and fuel regulations, 205-206, 207; announcing termination of war, 247-248

- Prohibition, 206, 236
 Property, control of, 182, 203, 212-214
 Protocol, preliminary, 232, 234, 236
 Provost Marshal General, 168, 170, 180
 Public Health Service, 177, 180
 Punitive expeditions, 65-67
- Radio control, 218-219
 Railroads, control of, 172, 208, 214-217, 262
 Railroads War Board, 214
 Railway Control Act, 171, 215, 231, 262, 269
 Ratification, power of, 246-248
 Rayner, Isador, Senator, theory of executive power, 13
 Recognition, power of, 31-34, 35
 Reed, James A., Senator, opposes Overman Act, 174
 Registration, under Selective Service Act, 168
 Regular Army, 105, 113, 122
 Reid, Whitelaw, peace commissioner, 240
 Reprieves, power of granting, 148
 Requisition, power to, 203, 204, 206, 210, 211, 217, 218
 Revolutionary War, dictatorship in, 18, 203; conscription in, 105; direction of, 269
 Rockhill, W. W., special commissioner to China, 40, 239
 Roosevelt, Theodore, President, theory of executive power, 12-13; relations with Santo Domingo, 41-42, 49, 54; intervention in Panama, 49; command in war with Germany, 105, 130
 Root, Elihu, on nature of war powers, 16, 250; Secretary of War, 259, 260
 Root-Takahira agreement, 41
 Rush, Richard, Acting Secretary of State, 38
 Russell, Jonathan, chargé d' affaires, 233; peace commissioner, 238
 Russia, recognition of Omsk government, 32; use of troops in, 123
- Sanford, Edward S., military supervisor of telegraphic messages, 196
 San Juan (Nicaragua), city of, bombardment of, 50
 San Juan, island of, executive agreement concerning, 39
 Santo Domingo, executive agreement with, 42; inchoate interest in, 48; intervention in, 54, 56
 Schouler, James, on power to make peace, 230, 237
 Schurman, Jacob G., member of Philippine Commission, 157
 Schurz, Carl, Senator, on inchoate interest in Santo Domingo, 48
 Scott, W. S., General, 126, 143, 190
 Secretary of Agriculture, 171, 210
 Secretary of Commerce, 171, 176, 210
 Secretary of the Interior, 180
 Secretary of Labor, 180, 213
 Secretary of the Navy, 38, 56, 142, 176, 180, 197, 198, 200, 201
 Secretary of State, 12, 40, 41, 48, 51, 66, 69, 87, 89, 171, 191, 195, 196, 197, 198, 210, 234, 239, 240, 255
 Secretary of the Treasury, 112, 113, 172, 180, 209, 210, 215, 238, 253
 Secretary of War, 41, 56, 62, 108, 109, 123, 125, 132, 142, 156, 159, 180, 191, 197, 198, 200, 201, 253, 255, 259, 260, 261
 Sedition Act, of 1798, 187, 188, 193, 194
 Selective Service Act, 105, 107, 113, 126, 127, 129, 168, 169
 Seminole War, of 1818, 65-66, 108, 132, 133
 Senate, on power of recognition, 32, 34; power regarding executive agreements, 37; treaty-making

- power, 47, 228-230, 231, 232, 244-246; filibuster in, 69; power regarding appointment and removal of officers, 126-129; on fuel order, 207; confirmation of peace commissioners, 237-239; on senators as treaty negotiators, 240-242
- Sequestration, 212
- Seward, W. H., Secretary of State, censorship by, 195
- Shepley, George F., military governor of Louisiana, 158, 161
- Sherman, L. Y., Senator, resolution on use of troops abroad, 57
- Shields, John K., Senator, on War Cabinet, 173
- Shipping, control of, 217-218
- Shipping Board, 171, 172, 180, 210, 217
- Siberian expedition, 123, 124, 125
- Signal Corps, reorganization of, 177-178
- Silesia, use of troops in, 56
- Smith, Hoke, Senator, opposes Overman Act, 174
- South, blockade of, 74, 125, 209; military government of, 154, 155, 157, 158, 161, 162, 163-164; reconstruction of, 251
- Spain, war with, beginning of, 91-92; declaration of, 95, 98, 104, 226; organization of forces in, 113; blockade, 125, 209; use of militia in, 134, peace negotiations, 234, 243; termination of, 248; acquisition of territories, 258
- Speed, James, Attorney General, opinion on military commissions, 144
- Spooner, John C., Senator, on conduct of foreign relations, 25, 245, 247; on powers of command, 117
- Sprigg resolution, negative declaration of war, 83
- Stager, Anson, military superintendent of telegraphs, 218
- Standards, Bureau of, 180
- Stanly, Edward, military governor of North Carolina, 158
- Stanton, Edwin M., Secretary of War, on military occupation of South, 156
- State, department of, peculiar status of, 25; see also Secretary of State
- Sterling, Thomas, Senator, on power to make peace, 230
- Stockton, Commodore, military governor of California, 154, 158, 161
- Stone, William J., Senator, on arming of merchant vessels, 69
- Story, Joseph, Justice, on power of recognition, 34; on power to make peace, 229
- Sumner, Charles, Senator, on nature of war powers, 15, 16, 17-18; on inchoate interest in Santo Domingo, 48; hostility towards Great Britain, 89
- Supreme Court, on executive power, 13; on nature of war powers, 16-17, 19; on power to begin war, 60; on wars of conquest, 223; on power to terminate war, 236; see also Table of Cases
- Taft, W. H., theory of executive power, 14; on formulation of foreign policy, 26; on power to make peace, 230; Secretary of War, executive agreement with Panama, 41; member of Philippine Commission, 260; governor of Philippines, 261; President, intervention in Caribbean Zone, 55
- Taney, Roger B., Chief-Justice, dissent in Prize Cases, 75; on suspension of habeas corpus, 192
- Taylor, Hannis, on use of troops abroad, 122
- Taylor, Zachary, General, 48, 70, 71, 87, 126; President, powers of reconstruction, 256

- Telegraph and telephone, control of, 180, 185, 196, 200, 214, 218-219
- Teller, Henry M., Senator, on senators as treaty negotiators, 242
- Termination of war, 223-231, 232, 235-236, 247-248
- Texas, annexation of, 31, 47; recognition of, 33; inchoate interest in, 47-48
- Thayer, H. E., censor in Civil War, 195
- Tillman, B. R., Senator, on senators as treaty negotiators, 241
- Trade, control of, 208-210
- Trading with the Enemy Act, 171, 172, 200, 201, 209, 210, 212, 230, 269
- Transportation, control of, 214-218
- Trau incident, 56
- Treaty of peace, as method of terminating war, 223-224, 228-229, 231, 232; negotiation of, 237, 242-246
- Tripoli, war with, 63
- Trist, Nicholas, peace commissioner, 238, 239
- Troops, reciprocal passage of, 40-41; use of in aid of civil power, 43-44; see also Army
- Turkey, diplomatic relations with, 36, 93
- Tyler, John, President, inchoate interest in Texas, 47, 48
- Upshur, A. P., Secretary of State, on executive power, 12
- Van Buren, Martin, Senator, on Panama Congress, 28, 39
- Venezuela affair, 30, 89-90
- Vera Cruz, occupation of, 52
- Versailles, treaty of, 246
- Virginus incident, 30, 41
- Voluntary enlistment, 101-105
- Wadsworth, James, Senator, on control of administration, 172
- Wage commission, 263
- War, articles of, 138, 141; declaration of, 46, 58-64, 71-76, 78-80, 82-98, 104, 226, 266; notification of, 96-97; termination of, 223-231, 232, 235-236, 247-248; see also Austria-Hungary, Civil War, Germany, Mexico, Revolutionary War, Seminole War, Spain, Tripoli, and *passim*
- War of 1812, beginning of, 85-86; declaration of, 95, 226; militia in, 132, 133, 136; control of commerce during, 208; armistice proposal, 233; termination of, 247
- War Cabinet, 172-173, 177
- War Industries Board, 172, 178, 179, 210, 211-212
- War Risk Insurance Bureau, 172, 176
- War Trade Board, 171, 179, 201, 210
- Washington, George, General, as dictator, 18, 203; President, power of defense, 62; army organization, 111; exercise of personal command 120, 135; exercise of pardon, 143; Lieutenant General, 103
- Whiskey Rebellion, 135, 149
- White, Henry, peace commissioner, 239
- Whiting, W., on defensive war, 59; on civil rights in war, 183
- Wickersham, George W., Attorney General, opinion on use of militia, 133, 134; on power to make peace, 230
- Willard, Daniel, direction of railroad operation, 215
- Willoughby, W. W., on executive power, 14; on declaration in civil war, 76; on powers of reconstruction, 251
- Wilson, Woodrow, on executive power, 12; on formulation of foreign policy, 26; President, relations with Mexico, 30, 35, 52, 67; severs relations with Germany, 36; arming of merchant vessels, 68, 69,

70; war influence, 92-93; proclamation of war, 97; conscription, 105, 108, 169; direction of military operations, 120, 123, 125; refusal to appoint Roosevelt to command, 130; court-martial procedure, 141, 142; exercise of pardon, 151; control of war administration, 170, 171, 177, 178, 268; opposes War Cabinet, 173; exercise of questionable authority, 175; control of aliens, 185-186; censorship, 197, 200, 201; control of economic resources, 203, 204, 205, 209, 210, 211, 212, 213, 215, 216, 217, 219; termination of war, 226, 230, 236; armistice, 234; demobilization, 235; peace negotiations, 239, 240, 242, 243, 244, 246; powers of reconstruction, 208, 262, 268

Wilson-Roosevelt doctrine, 12-13

Wood, Leonard, Major General, 43, 130, 159, 259

Woolsey, T. S., on breaking of diplomatic relations, 36; on declaration of war, 58

Worcester, Dean C., member of Philippine Commission, 157, 260

World War, administrative authority of President in, 170; censorship during, 197, 202, necessity for economic control, 203, 204; war powers in, 268, 269; see also Austria-Hungary, Germany

Wright, Luke E., member of Philippine Commission, 260; vice-governor, 261

X Y Z correspondence, 81, 82

UNIVERSITY OF ILLINOIS STUDIES
IN THE
SOCIAL SCIENCES

VOL. IX

SEPTEMBER, 1920

No. 3

ENGLISH GOVERNMENT FINANCE
1485-1558

BOARD OF EDITORS:

ERNEST L. BOGART

JOHN A. FAIRLIE

ALBERT H. LYBYER

PUBLISHED BY THE UNIVERSITY OF ILLINOIS
UNDER THE AUSPICES OF THE GRADUATE SCHOOL
URBANA, ILLINOIS

COPYRIGHT, 1921
BY THE UNIVERSITY OF ILLINOIS

English Government Finance

1485-1558

BY

FREDERICK C. DIETZ, PH. D.

Assistant Professor of History
University of Illinois

301 CONTENTS

CHAPTER		PAGE
I.	THE FIFTEENTH CENTURY BACKGROUND Royal revenues derived from feudal dues, lands and customs in the Middle Ages—Their decline in the Fifteenth Century—More frequent use of direct taxation by the Lancastrians—The fifteenth and tenth—Unsuccessful experiments with other direct taxes—Direct taxes not favored either by the crown or the people—"The King must live of his own" is the view of the gentry class which was most affected by direct taxation.	11
II.	THE ESTABLISHMENT OF THE TUDOR DYNASTY The king in alliance with the lesser gentry and the professional classes—The crown needs adequate revenues under its own control—The middle classes desire relief from taxation—Increase of the customs, and especially of the landed estates of the crown as a result—Made practicable by the increased economic unification of England.	19
III.	THE DEVELOPMENT OF THE NEW REVENUE SYSTEM Trade fostered to increase revenues by new trade treaties and by royal credit to merchants—Lands increased by resumptions of alienated portions of the crown domains, by confiscation and forfeitures of attainder—Renewed insistence upon feudal rights of the king makes possible great escheats to the crown—Wardship and Marriage—The purpose of the <i>Inquisitiones post Mortem</i> —Insistence upon suit of livery of lands by heirs—Temporalities of clergy held by king during vacations.	24
IV.	OBLIGATIONS AND RECOGNIZANCES: THE WORK OF EMPSON AND DUDLEY Increase of payments into the royal treasury "by obligation" and "by recognizance"—Their nature—Closely connected with the activity of Empson and Dudley—The growth of the Empson and Dudley legend—Examination of Dudley's own account book—Fines and pardons for infringement of penal laws comparatively few, except in cases of invasions of the king's feudal rights—Empson and Dudley not mere extortioners—Royal business agents—The importance of their work in building up the crown estates—Their unscrupulousness and unpopularity—Machiavellianism of Henry VIII.	33

V.	TAXES, LOANS AND BENEVOLENCES, THE FRENCH PENSION	51
	Royal revenues not at once adequate — Resorts to loans 1485 — 1490 — Use of foreign complications for royal pecuniary advantage — The Breton question and war with France — Parliamentary and clerical grants — The Benevolence of 1491 — The French pension — The Scotch war, 1496 — 1497, and the profits realized at that time.	
VI.	THE NEW ORGANIZATION OF THE FINANCIAL SYSTEM	60
	Henry VII's personal interest in his finances — The Exchequer, its organization and practices — The Exchequer of Receipt — The Exchequer of Account — The new Declarations of the State of the Treasury — The Exchequer inadequate for the requirements of the new financial system — Richard III's plan of reorganization — Henry VII's new court for the newly acquired crown lands, the General Surveyors — Evidence of the time of the erection, and the functions of this new body — The Treasury of the Chamber a treasury for the new court — Exchequer opposition to the new court — Not given parliamentary authority until the reign of Henry VIII — The position of the Chamberlain of Berwick, and of the Treasurer of Calais, and the Calais Staple in the revenue system — Personal audit by the king of the accounts of the new revenues, and of the important extraordinary expenditures — Origin of the Declared Account.	
VII.	THE VALUE OF HENRY VII'S REVENUES	78
	The rate of increase in the yield of the revenues — Marked by 1497 — Analysis of the revenues — Receipts and disbursements in the Exchequer — Receipts and disbursements in the Treasury of the Chamber — Receipts and expenditures at Calais and Berwick — Henry VII's surplus.	
VIII.	WOLSEY AND NATIONAL FINANCE	88
	Slight increases in luxury in Henry VIII's court and household — Decline of the revenues in the Exchequer — Decrease of the crown estates through alienation by grant — Revenues rendered inadequate by the beginning of an active foreign policy — The first war with France — Parliamentary grants of taxes unsatisfactory — The inherited surplus depleted — The second war with France — Resort to forced loans — The great subsidy of 1523 — The failure of the Amicable grant in 1525 — Henry VIII compelled to make peace — Inelasticity of the revenues shows need for radical increase to make the accumulation of treasure possible, against sudden emergencies — Wolsey's retrenchments — His measures to increase the French pensions.	
IX.	CROMWELL'S EARLY ADMINISTRATION	103
	Continued decline of the revenues from existing sources — Increased needs of the government: buildings, Calais, Dover, Scotland, Ireland — Need of surplus	

treasure felt—Attempts to secure parliamentary grants, 1531, 1532—Taxation ineffective for the purpose at that time—Cromwell's problem compared with Henry VII's—Cromwell strips the church, as Henry VII stripped the nobility—The confiscation of Wolsey's wealth and the *praemunire* of the clergy—Early suggestions of the general confiscation of the church's wealth—The plan of 1534—The First Fruits and Tenths secured—Revenues not yet adequate.

- X. THE DISSOLUTION OF THE MONASTERIES 117
 A new plan to annex the wealth of the church to the crown—The visitation of the monasteries in 1535—Development of Cromwell's plans during the visitation—The reports of the visitors—The passage of the act of dissolution of the smaller houses—The causes of the dissolution—Evil living in the houses—Monks were the chief supports of the papal authority—These claims not substantiated—Behind these pretexts the chief cause of the dissolution was the financial needs of the government—The surrender of the larger houses and friaries—The shrines.
- XI. THE REVENUES AND THEIR YIELD AFTER THE INCREASES MADE BY CROMWELL 137
 The yearly value of the monastic estates as studied by antiquarians—Their figures of little value to show Henry VIII's gains—Comparison of the monastic revenues acquired by Cromwell with the older revenues to show their importance—The revenues of the Exchequer, Court of General Surveyors, the Duchy of Lancaster and the Court of Wards—The new revenues in the Court of First Fruits and Tenths—In the Court of Augmentations—The new surplus.
- XII. THE WAR WITH FRANCE AND SCOTLAND, 1542—1547 144
 The relations of France and the Empire, 1537—Growing hostility to Henry VIII in France—Friction between France and England, 1539—The question of the Pensions—Scotland—Preparations for financing a coming war—Accumulation of the surplus hastened—Sale of monastic lands in large amounts adopted 1539—Dissolution of the Knights of St. John—The subsidy of 1540—Other measures—The Benevolent loan, 1542, and succeeding forced loans—Loans in Flanders, 1544—The debasement of the currency, 1544—Chaotic conditions in 1545—The peace of 1546.
- XIII. DIRECT TAXES, LOANS, AND THE DEBASEMENT OF THE COINAGE, 1542—1547 159
 Growing productivity of direct taxes in this period—Early history of the subsidy, and its development in Henry VII's, and the earlier part of Henry VIII's reigns—Forms of the later subsidies—Use of fifteenths and tenths in conjunction with the subsidies—Renewed resort to the forced loans—Really arbitrary

taxes without parliamentary authority — Method of assessment and collection — Their yield — Resistance to the loan in 1545 — The contribution of 1546 — The loans in Flanders — Of interest as illustrating practices of international banking — Stephen Vaughan, the king's agent in Flanders and his work — The debasement of the coinage — Earlier enhancements of the value of the coinage in the Tudor period — Unstable relation of the value of gold and silver, and changes in the exchange — The alteration of 1542 — The great debasement of 1544 — Pressing need for money the only cause — Extent of the debasement — The government's profits.

XIV.	THE SCOTCH AND FRENCH WARS, 1547 — 1550 . . .	178
	Strained condition of the financial resources at the beginning of Edward VI's reign — Dishonesty and graft in the government made situation more serious — Crisis brought on by renewal of the war with Scotland and France — Sale of crown lands — Confiscation of the chantries — Further debasement of the coinage — Foreign loans.	
XV.	NORTHUMBERLAND'S FAILURE, 1550 — 1553 . . .	188
	The heavy post-war charges — Increase in normal expenditures in the household — Retrenchment — Debts due to the crown called in — Church plate confiscated and church ornaments and bells sold — Coinage still more debased — Attempts to pay the loans in Flanders — Summer 1552, treasuries empty — Northumberland disarms himself — Heroic effort to rehabilitate the state's finances — William Cecil placed in charge — Parliamentary grant — Attack on the last great properties of the church, the bishops' estates begun.	
XVI.	RECONSTRUCTION UNDER MARY, 1553 — 1558 . . .	202
	Expenditures at once reduced and pensions curtailed — Revenue increased — Recovery of some of the fraudulently alienated lands — Rise in rents of the crown lands — New Book of Rates for customs, and imposts on cloth, wine and beer — The debts in Flanders — Parliamentary taxes — Forced loans — Retrogressive steps — Restoration of lands confiscated by Henry VIII and Edward VI — Surrender of First Fruits and Tenths. Conclusion.	
	APPENDIX AND BIBLIOGRAPHICAL NOTES . . .	215
	INDEX	239

PREFACE

The publication of the Pipe Rolls, of Expenditure and Receipt Rolls, of Taxation and Subsidy Rolls, of Household and Wardrobe Accounts and many other accounts of official nature has made available in printed form a large body of material for the student of English government finance, especially in the later Middle Ages. Much research has already been done on special topics. Beside Madox's *History and Antiquities of the Exchequer*, and its continuation beyond 1327 in F. S. Thomas's little book, *The Ancient Exchequer of England*, there is the highly scholarly work on the Exchequer by Hall, Poole and Vinogradoff. The history of the customs has been rather fully and carefully written by Hubert Hall, whose theory of the origin of the customs has been corrected by Gras. The taxation of the thirteenth century is elaborately examined by S. K. Mitchell, in his *Studies in Taxation under John and Henry III*, and by J. A. C. Vincent, in his *Lancashire Lay Subsidies*.

But no satisfactory general account of the finances of the English government, showing their nature and extent, and the theories on the basis of which various kinds of revenues were used, bringing out at the same time the close interrelation and interaction between finance and the more general political problems and policies, has yet been written. The nearest approach to such a general account is Stephen Dowell's *History of Taxation and Taxes in England*. His implied assumption that taxation was always the chief resource of English governments for their revenues, is incorrect, and has led to a too large disregard of the vastly more important revenues under the king's own control, in the earlier period. Dowell's account of the earlier period of English history moreover, is too meagre, and at best he is chiefly interested in the "how" of things, and pays little attention to the "why." Dowell's book may be supplemented by S. A. Morgan's *History of Parliamentary*

Taxation in England, a short, ably written sketch, and by chapters in Cunningham's *Growth of English Industry and Commerce*. For the period down to 1485 J. H. Ramsay in his *Foundations of England*, *The Angevin Empire*, *The Dawn of the Constitution*, *The Genesis of Lancaster*, and *Lancaster and York*, devotes much attention to the actual revenue receipts and expenditures, without, however giving any very extensive interpretive account of them.

For the Tudor age less has been done than for times earlier. There is little besides Schantz's *Englische Handelspolitik*, and some short articles, like Gras's *Tudor Books of Rates*, Mrs. Eric George's *Note on the Origin of the Declared Account*, Professor Oman's *The Tudors and the Currency*, and Mr. A. P. Newton's *The King's Chamber under the early Tudors*. Of the actual amount of the English revenues, and the comparatively small part played by direct taxation of Parliamentary origin, and of the great changes in the organization of the whole financial system between 1485 and 1554, very little is known, or indeed suspected by writers of English history.

In the preparation of this essay, the attempt has been made to collect, and to study carefully all the existing revenue accounts of the English government from 1485 to 1558, together with all other documents which would serve to make clear the government's policy and purposes. Many classes of documents in the Public Record Office hitherto entirely unused were investigated. It is hoped that by this research something may have been done to make a beginning of a history of Tudor Finances, and some small contribution made to the larger work of a general history of the finances of the English State.

This study was undertaken at the suggestion of Professor Edwin F. Gay when he was still at Harvard University, and to his stimulus and friendly counsel whatever merit it may have, is due.

FREDERICK C. DIETZ

CHAPTER I

THE FIFTEENTH CENTURY BACKGROUND

In the middle ages, the revenues of the English kings were derived from the *firma comitatus*, or farm of the ancient domains of the crown and of the king's share of the fines in the popular courts; the fee-farms of incorporated boroughs and cities; the fines and amercements in the king's courts; the farm of the ulnage and the profits of escheat and other feudal incidents. To these Edward I had added the great and small customs, the *magna* and the *parva custuma*, and Edward III the customs subsidies of tonnage and poundage, and of wool, wool fells and leather. The customs subsidies of tonnage and poundage and of wool, wool fells and leather were of parliamentary origin, and in the fifteenth century either were granted for periods of two or three years and renewed, or were voted for life. Though they were given theoretically for the safeguarding of the seas, and the defense of the realm, and though parliament endeavored to control their use, in actual fact, once they were granted by Parliament, the king used them as he pleased, and for all practical purposes they formed part of the annual regularly recurring revenues of the crown.¹ Besides the feudal

¹ Henry V received the grant of these subsidies for life after the battle of Agincourt (*Rot. Parl.*, IV, 641); Henry VI in 1453 (*Rot. Parl.*, V, 229); Edward IV in 1472 after Hexham (*Rot. Parl.*, VI, 154); and Richard III in 1485 (*Rot. Parl.*, VI, 238). A grant for life was never to be a precedent, (*Rot. Parl.*, IV, 64a). In 1404 the Commons in their grant declared that the sums received from these subsidies should be spent "in especial expense in defence of the realm, according to the form and intent of the grant . . . and for no other purpose." Anyone who received any sums out of the said grants "for wars or for any debt due by King Henry before the day of this present Parliament except only for the defence of the realm to be made in time to come" was declared guilty of treason. The disbursement was placed in charge of treasurers of war, to

dues and the customs, the king enjoyed the income from estates which had come more recently into the hands of the crown, especially in the course of the fifteenth century, either by inheritance like the lands of the Duchy of Lancaster, or by forfeiture like the estates of the Duke of Clarence.

The crown revenues from feudal sources and from customs diminished greatly in value in the course of the fifteenth century. In the reign of Henry VI the *firma comitatus*, and the fee farms of the chartered towns, and other feudal dues had yielded £17,000 yearly to the crown.² In the reign of Edward IV they returned only £2,500.³ The customs revenues of all kinds had averaged £47,000 a year in Henry IV's reign. In the middle of the century they fell to £32,000 a year, and in the first half of Edward IV's reign to £25,000 a year. They rose to an average of £35,000 a year in the latter half of this reign, only to decline to £20,800 a year for the three years of the reigns of Edward V and Richard III.⁴ The more recently acquired crown lands were in a similar case. During the fifteenth century the land which came to the crown by forfeiture was very great in extent. Fortescue estimated that during the reign of Edward IV alone, the king held possession of one fifth of the land of England, at one time and another.⁵ Because faithful followers demanded rewards, and perhaps because a system of centralized control of crown lands had as yet not been sufficiently developed, the land passed out report at the next Parliament (*Rot. Parl.*, III, 546b). Even as late as 1473-1476 Sir John Fortescue, in his *De Dominio Regali et Politico*, declared that the subsidy of the tonnage and poundage ought to be applied only to the keeping of the sea, and was not to be considered part of the king's ordinary revenues (Fortescue, *Works*, I, 456). But as early as 1406 Henry IV was permitted to use £6,000 of the revenues from customs subsidies as he pleased (*Rot. Parl.*, III, 568b); in Henry VI's reign it was made possible to use some of their returns to meet household expenses (*Rot. Parl.*, V, 246-247), and in Edward IV's reign assignments for the household were definitely made upon these subsidies (*Rot. Parl.*, VI, 198-199).

² Ramsay, *Lancaster and York*, I, 145-146.

³ *Ibid.*, I, 458.

⁴ *Ibid.*, I, 151, 313; II, 254-257; 461-462; 559. These tables are based on the *Lord Treasurer's Remembrancer's Enrolled Customs Accounts*.

⁵ Fortescue, *Works*, I, 463.

of the king's possession almost immediately.⁶ The hereditary estates of the crown, the Duchy of Cornwall, the Earldom of Chester, the Principality of Wales, and the Duchy of Lancaster were alienated only in part; but they were so burdened with charges that during the reign of Edward IV that they returned to the crown only five-eighths of their rental.⁷ From all the more recently acquired crown lands Edward IV received per year on the average, during the last years of his reign,⁸ £6.471 and during the reign of Richard III, the sums seem to have been less.⁹

The growing deficiency of the ordinary revenues gives a clue to the rising importance of direct taxes of parliamentary origin in the fifteenth century. The difficulties of the Lancastrian kings were not due to extravagance and mismanagement. Their shrinking revenues scarcely sufficed for their ordinary expenses, and their constant wars compelled them to find further resources in frequent parliamentary grants.

The usual parliamentary tax was the fifteenth and tenth. The fifteenth and tenth was a grant of the fifteenth part of the value of movable property belonging to persons outside the royal demesne; and the tenth part of such value in case of persons living on the royal demesne and in cities and boroughs. Though this tax was originally assessed anew at every grant, it was fixed in 1334 on the basis of a composition between the royal commissioners and the men who paid it.¹⁰ The sum agreed upon was "entered on the rolls as the assessment of the particular township. And the tax-payers in the townships were required to assess and collect the amount upon and from the various contributors."¹¹ The fifteenth and tenth thus passed out of the control of the royal assessors and commissioners, since the tax-payers in each township assessed and collected the required sum, and it became a fossilized tax yielding at

⁶ Ramsay, *Lancaster and York*, I, 147; II, 459.

⁷ *Ibid.*, II, 459-461.

⁸ *Exch. of Receipt, Receipt Rolls*, nos. 941, 942, 943, 946, 947, 949; Michaelmas 1480-Michaelmas 1483.

⁹ *Exch. of Receipt, Receipt Rolls*, nos. 950, 951; Easter, 1484-Easter, 1485.

¹⁰ Stephen Dowell, *History of Taxation and Taxes in England*; I, 87.

¹¹ *Ibid.*, I, 86.

first between £38,000 and £39,000.¹² But since no new groups could be added to those which paid the tax, nor the amount paid by any existing group increased because of the fixing of the assessment in 1334, as the old groups became unable to pay their full quotas, the value of the tax to the crown decreased. Allowances were made from time to time for decayed towns. In 1443 the specific sum of £4000 was allowed,¹³ and this was increased in 1449 to £6000, when, in addition, the city of Lincoln and the town of Great Yarmouth were completely exempted from payment. From that time forward these allowances and exemptions were always made. The yield of the tax was thus reduced to between £32,000 and £33,000, and continued to fall. It is to be noted also that the fifteenth and tenth, originally a tax on movable goods became after 1334 a fixed tax on land. It did not however touch the demesne lands of peers, and it passed over the landless population entirely.¹⁴

For these reasons, the Lancastrian and Yorkist kings, and even their predecessors made every effort to replace the fifteenth and tenth by more productive taxes with a broader incidence, collected under royal control. In 1404 Henry IV declaring to Parliament that the grant of 1402 was insufficient, received a new tax, a grant of five per cent of the yearly value of lands and rents in England, or of one shilling for every £20 of personal property in the case of men without land. With this were combined two fifteenths and tenths.¹⁵ During the next reigns various experiments were tried; a tax on householders combined with a tax on knights' fees,¹⁶ a tax on land,¹⁷ a graduated tax on land,¹⁸ and in 1440 a graduated income tax combined with an act for the resumption of all grants from the royal demesne since the accession of Henry VI.¹⁹ The remark-

¹² *Ibid.*, I, 87.

¹³ *Rot. Parl.*, IV, 425a.

¹⁴ *Nottingham Records*, II, 286; Vickers, *England in the Later Middle Ages*, 335.

¹⁵ *Rot. Parl.*, III, 546-547.

¹⁶ *Ibid.*, IV, 318b; anno 1427.

¹⁷ *Ibid.*, IV, 370; anno 1431.

¹⁸ *Ibid.*, IV, 486b; anno 1435.

¹⁹ *Ibid.*, V, 172-174. A description of these taxes is given in Dowell, I, 104-126.

able thing is, that of all these experiments made during the first half of the fifteenth century, not one was successful enough to be repeated. The new taxes were perhaps sometimes too elaborate to be successfully managed with the existing governmental machinery; but the proviso added to nearly all the new taxes that they were not to be taken as precedents, lends some support to Dowell's statements that the fifteenth and tenth "came to be regarded by the people almost as of constitutional right" and that all the attempts to introduce other forms of taxation ended in failure for that reason.²⁰ Even in conjunction with some of the new taxes the fifteenth and tenth was used, as in 1404, 1431 and 1435; and it was always returned to in the intervals between experiments.

Edward IV made two great efforts to change the character of the parliamentary grants, in 1463 and 1472. In 1463 the £6,000 allowed in the fifteenth and tenth for decayed towns was to be levied upon the shires proportionately to the sum allowed for the decayed towns within each shire. This sum so apportioned to the shire, was to be levied upon the inhabitants having twenty shillings in yearly value of lands or ten marks in goods, by royal commissioners, and the money was to be collected by royal collectors. This plan was an attempt to recoup the crown in the collection of fifteenths and tenths to the amount of the allowances made to the shires for decayed towns; to alter the incidence of taxation by a new limit of exemption and the inclusion of the landless classes; to introduce the principle of a progressive charge; and to replace local by royal assessment and collection;—in short, "to revise the settlement of 1534."²¹ The king was compelled to abandon the attempt. He remitted the £6,000 and agreed to collect the fifteenth and tenth under the old forms.²²

In 1472 Edward IV made another attempt to change the old order. To pay for the support of 13,000 archers against France for one year, estimated to cost £118,625, he received from Parliament the grant of ten per cent of all issues and profits of lands and tenements, rents, fees, annuities, offices and

²⁰ Dowell, I, 88.

²¹ *Ibid.*, I, 121.

²² *Rot. Parl.*, V, 498.

other income from the Commons and Lords in Parliament.²³ The first collection of the tax yielded £31,140. To provide the balance, Parliament before its prorogation granted a fifteenth and tenth, and saddled £5,383 arbitrarily upon those counties whose certificates of assessment had not been returned in time for the first collection. There was still lacking £51,147, however, after this second grant had been collected. This sum was now assessed upon the shires in specific amounts, and royal commissioners were sent to subdivide the sum assessed on a county, among the inhabitants, levying on the value of goods and chattels, which were to be taxed before any land or landed possessions. The new tax was not successful. The House of Commons, stating that "the most easy, ready and prone payment of any charge to be borne within this realm by the commons of the same, is by grants of fifteenths and tenths, the levy whereof amongst your people is so usual although it be to them full chargeable, that none other form of levy resembleth thereunto," prayed the king to remit the said £51,147. and take in its place one entire fifteenth and tenth and "three parts" of a fifteenth and tenth.²⁴ The next grant of taxes in 1482 was a fifteenth and tenth in the old form.²⁵

The fifteenth century experiment of using direct parliamentary taxation to increase the governmental income was not regarded as successful by either the king or his people. For the crown it was accompanied by an unwelcome surrender of power to Parliament, which made opportunities of the king's necessities to endeavor to increase its own control of the state, and to interfere with the policies of the king. The "constitutionalism" of the century follows directly upon the financial difficulties of the Lancastrian sovereigns. Among the "people" taxation as a method of government finance was unpopular. As the "people" expressed themselves in Parliament and through the writers on political theory, like Sir John Fortescue, they show themselves to have an ingrained notion that the king should live of his own. Henry IV was petitioned by his Parliament of 1404 that he should live of his own,²⁶ Sir John Fortescue

²³ *Ibid.*, VI, 4.

²⁴ *Ibid.*, VI, 151.

²⁵ *Ibid.*, VI, 197.

²⁶ Oman, *The Political History of England, 1377-1485*, 191.

held that in general the king should live of his own "livelood" which was his in right of his crown,²⁷ and Edward IV, bidding for the support of the nation at large, announced in 1467 that he intended to "lyve upon my nowne, and not to charge my subyettes but in grete and urgent causes."²⁸ Only when there fell "a case overmuch exorbitant," for the suppression of rebellion, the defence of the realm to repel invasion and the safeguarding of the seas, was it thought right and necessary that the people should be taxed.²⁹ The formulated reason for this attitude was that taxes, regularly levied for the support of the ordinary charges of the government impoverished the people. France where the aides and tailles together with the gabelle and certain excises were the important revenues of the king, was the horrible example. "There the same commons be so impoverished and destroyd that they may unneth (scarcely) lyve. Thay drynke Water. Thay eate Apples, with Bred right brown made of Rye. They eaten no flesche. . . Their Wifs and Children gone bare fote. . . Thay gone crokyd and ar feble not able to fyght nor to defend the Realme nor they have wepon nor monye to buy them wepon withal."³⁰ In England with the commons poverty-stricken by taxation, the archers would decrease, and the nation's military power be weakened. The people, being men of greater courage than the French might rise against the king. In time of special need they would not be able to help his necessities as they now did with subsidies and fifteenths and tenths.³¹

Behind such arguments, Lord Acton would have us seek the baser motives, the special self-interest. The articulate classes, who ever arrogate to themselves the designation of the people, who voiced these protests against taxation in the persons of such writers as Sir John Fortescue, or through the House of Commons, were the richer freeholders and gentry of the country; and the burgesses of the towns. The persons who paid the fifteenths and tenths and subsidies were precisely these same ones. Had they been given to deeper introspection, they would

²⁷ Fortescue, *Works*, I, 458-459.

²⁸ Vickers, *England in the Later Middle Ages*, 467.

²⁹ Fortescue, *Works*, I, 457.

³⁰ *Ibid.*, I, 451-452.

³¹ *Ibid.*, I, 464-466.

probably have acknowledged that their real objection to taxation as a method of financing the state was that it took their property and the property of their peculiar classes alone, for the support of the state and government. The continuance of the earlier developments of the country might have reconciled them to taxational finance; for in return they had acquired in their institution, Parliament, especially in Henry IV's reign, a large degree of control in the state. This control seems to have been asserted rather to limit expenditure and to keep down taxes, rather than for any desire to shape high policy. For the proper use of this control, in their own interests however, the gentry and burgesses had neither experience nor aptitude. When in the middle of the century they found Parliament and its power the tool of ambitious restless nobles like the Beauforts, York, Warwick, and later, Gloucester, for the disturbance of the peace of the land, they must have felt that government should be chiefly the concern of the king. Rather than power in the state, which they did not yet know how to use, they preferred for themselves relief from the necessity of supporting the state. Thus the ancient idea that the king should live of his own was reinforced, and became anew a vital article of their creed.

CHAPTER II

THE ESTABLISHMENT OF THE TUDOR DYNASTY

Henry Tudor's chief advisers and supporters in 1485 fall into two classes; on the one hand the Earl of Oxford and the Courtenays of Devon, and on the other, John Morton, Richard Fox, Reginald Bray, Richard Guildford, Edward Poynings, Richard Edgecombe, and Thomas Lovell.¹ Oxford and the Courtenays are representatives of the remnants of the old Lancastrian nobility. They had been exiled for their loyalty to the cause of Lancaster, and their property and wealth confiscated. To them the triumph of Henry Tudor meant the victory of the true Lancastrian claimant over the usurper of York, together with their own personal rehabilitation in title, estates and position.

Morton, Fox, Bray, Guilford, Poynings, Lovell and Edgecombe were all of them sons of yeomen or lesser gentry; men with university or legal training, or skilled in accounting—in a word—the professional men of the middle classes. The best trained and most experienced men of their classes, they may be taken as the best representatives of the attitude and interests of their classes, and their support of Henry Tudor was more than mere personal service. To them Henry Tudor was not a Lancastrian as opposed to the Yorkist Richard III, but the strong prince, the legitimate king, the enemy of the feudal nobility who for the last thirty years had made sport of the king and the crown. The revolution of 1485 was a revolution of the middle class in alliance with Henry Tudor, with such help as they could get from the Lancastrian cause against the old nobility. The Tudor commonwealth which followed was an alliance of the same middle class with the crown for mutual self interest.²

¹ There were of course also those Yorkists who resented Richard III's usurpation, like the Woodvilles.

² Cf. J. W. Burgess, *Political Science and Comparative Constitutional*

One of the chief interests of the crown was to secure a sufficient revenue, at least, large enough to make impossible a repetition of the humiliation and chaos of the fifteenth century. It might be increased so much even as to enable the crown to be freer in its choice of policies, or as it termed, to become more absolute. The middle class desire among other things was to shift from itself the burden of financing the state, or of contributing to its support, to be as free as possible from taxation.

The trend of the working of the alliance of the king and the middle class is clearly indicated in the first Parliament of Henry VII's reign. The question of an adequate revenue was taken up early in the session. The first grant made to the king was that of the subsidies of tonnage and poundage and of wool, wool fells and leather for life, for the defence of the realm and the safe-guard and keeping of the sea.³ With a view to increasing the yield of these and other customs revenues, or at any rate to stop the decrease caused by merchants alien becoming denizens — since denizens paid at a lower rate than aliens — all merchants alien who became denizens were required to continue to pay at the higher rate.⁴

Further, since the present revenues did not suffice "to kepe and sustayne" the king's honorable household, and his other ordinary charges "which must be kept and borne worshipfully Law, I, 93. "By the middle of the fifteenth century the actual power of the state had passed from the aristocracy to the people. It remained now for the people to organize themselves and seize the sovereignty. Nominally they were organized in the House of Commons, but really they were not. The House of Commons was then but a kind of overflow-meeting of the House of Lords. The people were not yet far enough advanced in the development of their political consciousness to create an entirely independent organization. An *existing* institution must furnish them the nucleus. They were deeply conscious of their hostility to the aristocracy. There remained, then, only the King. He, too, was hostile to the aristocracy. Through their common enemy, the King and the people were referred to each other. In the organization which followed, called in political history the absolute monarchy of the Tudors, the people were in reality, the sovereign, the state, but apparently, the King was the state. England under the Tudors was a democratic political society under monarchic government."

³ *Rot. Parl.*, VI, 268.

⁴ *Statutes of the Realm*, 1 Henry VII, c.2.

and Honorably as it accordeth to the Honor of your Estate and your said Realme by the which your adversaries and enemyes shall fall into the drede wherein heretofore they have byne," the crown estates were increased by the resumptions of the alienated portions.⁵ The Duchy of Cornwall, the Earldom of Richmond and other lands were assured to the crown.⁶ Finally, acts of attainder were passed against Richard, Duke of Gloucester, John, Duke of Norfolk, the Earl of Surrey, Francis Lovell, Walter Devereux, Lord Ferrers, John Lord Zouche, Richard Ratcliffe, William Catesby and others, and their lands were confiscated.⁷ Even though important and numerous exceptions were made to the resumptions, and lands were restored to persons attainted under Richard III,⁸ the crown estates were greatly increased by these acts. Whereas the income from lands had been £6,471 a year during the last year of Edward IV's reign, it was £13,633 during the first year of Henry VII.⁹

These revenue acts, and especially the statutes of resumption, confiscation and forfeiture satisfied the desires and interests of both the king and the commons. They were the beginnings of a revenue system which would become adequate for the needs of the state and relieve the middle class, at the expense first, of the merchants, especially foreigners, in whose control most of the foreign trade lay; and secondly, of the common enemy, the feudal nobility. The customs revenues and rents of

⁵ The first resumption comprehended all the lands of the Duchy of Lancaster in the possession of Edward IV on March 4, in the first year of his reign or at any time thereafter, or in the hands of Richard III at any time in his reign, with the revocation of all their grants and alienations from the Duchy (*Rot. Parl.*, VI, 271-272). Later in the same session the great resumption of all such castles, lordships, honors, manors as Henry VI had on October 21, 1455, as parcel and in right and title of the crown of England and of the Duchies of Lancaster and Cornwall, the Principality of Wales, and the Earldom of Chester was made. All gifts, grants and leases made by Richard III, and the gifts and grants of offices made by Edward IV before August 21, 1485, were annulled (*Ibid.*, VI, 272, 336).

⁶ *Ibid.*, VI, 272.

⁷ *Ibid.*, VI, 276.

⁸ *Ibid.*, VI, 339-385.

⁹ *Exch. of Receipt, Receipt Rolls*, nos. 955, 958. This figure does not include the *firma comitatus*, or the fee farms of the cities.

landed estates in the possession or control of the crown were the bases of the new Tudor revenue system. In the later Tudor period the customs became more important, though they were never neglected from the beginning. During the earlier time the chief reliance was upon the crown lands and the special concern was to increase their extent and value.

The use of landed estates as a chief basis of the new revenue system, which political exigencies demanded, was made possible by the advancing economic development of the country. In the last analysis governmental revenue systems are efforts to turn the chief forms of wealth of the country most efficiently to the support of the state with due regard for the prevailing political idea or theory. Their nature varies with, and corresponds, sometimes tardily to the changing economic development and organization of the country. In the Middle Ages, when communication was poor, the country economically disunited and the state in general weak, feudal aids and incidents, the profits of jurisdictions and the farms of the demesne lands of the king by the sheriffs were the most effective means of diverting the wealth of the country, in its form of land to the support of the government. But towards the close of the fifteenth century, communication improved, money economy had developed rapidly, book keeping of a more modern form made possible exact supervision from a distance, England became more economically unified, and London became the economic as well as the political capital of most of England. The extension of the domestic system in the fifteenth century, and its national regulation by the truck act of 1465, the regulation of the corn trade by the government, the parliamentary recognition of craft guilds, the protection of native artisans, and the complete adoption by the Tudors of the mercantilist policy foreshadowed in the legislation of Richard II, are special phases of the expansion of the economic unit and the more perfect nationalization of the economic life of the country.

This more perfect unification made practicable a more effective means of turning land, at the outset of the Tudor period still the chief form of wealth, to the support of the state. It was now possible for the crown to manage directly from London and to receive in money payments the rents and issues of vast

estates owned or controlled by the crown in the several counties. On these lands and manors the demesnes were let on leases for money rents, and the peasant holdings were under the direction of royal bailiffs and stewards, the whole overseen by crown surveyors controlled directly from London by the expert accountants in the government service.

The beginnings of this use of lands as one basis for a revenue reach back into the early fifteenth century. The Duchies of Lancaster and Cornwall foreshadowed the new system; the confiscations of Edward IV were a groping toward it. Richard III drew up a plan of central administration and control of large landed estates.¹⁰ Henry VII favored by the coincidence of economic practicability and the political desire of the most forceful group of his subjects brought to realization the tendencies and plans of the past decades.

¹⁰ See below, chapter VI.

CHAPTER III

THE DEVELOPMENT OF THE NEW REVENUE SYSTEM CUSTOMS AND CROWN LANDS

“Being a king that loved wealth and treasure,” says Bacon of Henry VII, “he could not endure to have trade sick.” He fostered commerce by opening new markets for English trade and by bettering old facilities. Treaties with Denmark in 1489 and 1490 opened Iceland, renewed privileges to English merchants in Norway, especially at Bergen, and taken with the unratified treaty with Riga in 1499 were attempts to break the Hanseatic League’s monopoly of the Baltic. Trading relations with the Netherlands were reestablished by the *Intercursus Magnus* of 1496 with a removal of restrictions imposed during the past fifty years. The treaty of 1486 with France provided for free intercourse and the removal of all special burdens imposed during the past twenty-one years. Nine years later, as a price of his neutrality in the Italian war, Henry compelled Charles VIII to restore other ancient trade privileges. The English penetration of the Mediterranean was furthered by the treaty of Medino del Campo with Spain, and the pact with Florence in 1490.

In the later years of the reign, Henry VII stimulated foreign trade by advancing capital to English and Italian merchants, to the extent of at least £87,000 between 1505 and 1509. The king accepted no interest, as indeed it was illegal for him to do; but he required that the borrower bind himself to import into England enough goods each year, as long as the loan stood, to pay certain amounts in customs dues.¹

In this fashion, by providing easy conditions of trade and credit, Henry VII developed his customs revenues. He did

¹ *Exch., Treasury of Receipt, Misc. Books*, 214.

not make any but unimportant increases in the existing duties of the tonnage and poundage and the old and new customs. He satisfied himself with the increased revenues resulting from an increase in the bulk of transactions. He tried further to abolish the exemptions and special privileges of foreign merchants in England and to secure more faithful fulfillment of their duties by custom house officials. A better valuation of the goods upon which duty was paid was probably secured by the substitution in 1507 of an official Book of Rates for the port of London, for the declaration by the merchant on his oath.² During the first ten years of the reign, the customs revenues averaged £32,951 a year; during the remainder of the reign they were increased to £40,132 a year.³

For many years the customs yielded a revenue larger than the crown rents and other income based on land. Yet it was in the increase of the landed revenues that the most rapid and remarkable progress was made. The resumptions and confiscations made in the Parliament of 1486 more than doubled the value of the royal estates proper. Since however £7,723 of the rents was at once assigned to the maintenance of the household and wardrobe each year,⁴ there were only a few thousand pounds available for the king's other purposes. During the next ten years, large additions were made to the crown estates by the attainder and the forfeiture of the estates of Sir Simon Montford, Sir Robert Ratcliffe, William Daubeney, Humphrey Stafford and others, and especially of Sir William Stanley "the richest subject for value in the kingdom." From his castle of Holt, the Treasurer of the Chamber received £9,062 in ready money beside the small sum realized from the sale of his goods;⁵ and his lands yielded the king over £1,000 a year clear.⁶ The lands of Cecilie, Duchess of York, valued at

² Gras, *Tudor Books of Rates*, *Quarterly Journal of Economics*, XXVI, 766ff.

³ The whole subject of the customs and the commercial policy of Henry VII, and of Henry VIII is admirably and exhaustively treated by Georg Schanz, *Englische Handelspolitik gegen Ende des Mittelalters*.

⁴ *Rot. Parl.*, VI, 299f.

⁵ *Accounts, Exch., Queen's Remembrancer*, 413/2, f. 85.

⁶ *Exch., Treasury of Receipt, Misc. Books*, 212.

£1,200 a year came into the king's hands by escheat,⁷ and Parliament made the further resumptions of the alienated portions of the manor of Woodstock and of all the York lands.⁸ Other great additions to the crown lands were made later, by the acquisition of the queen's land, on the death of Queen Elizabeth, and of the lands of Jasper, Duke of Bedford, of Sir Francis Cheyne, of Edward de la Pole, of Lord Ferrers and of Lord Audeley, leader of the Cornish rebels.⁹

Henry VII was not content merely to increase the extent of the crown estates; he sought to make their revenues as productive as possible. In February of 1486, Sir Reginald Bray, Chancellor of the Duchy of Lancaster was ordered to carry out a "reformation" of officials in charge of the royal lands as far as was thought necessary "for our most profit and avail,"¹⁰ and in the following year an act of Parliament not only annulled all grants of office of receiver, auditor, customer, collector of customs and subsidies, controller, searcher, surveyor, "aunager," but revoked all leases on manors and lordships of the king, in order to enable the king "providently" to make new leases "for his most profit and approvement of his revenues."¹¹ Again, in 1495 all leases in the Principality of Wales were declared void by Parliament, because "much less rent reserved unto the king and the prince than the said lordships manors lands and tenements might reasonably be set for."¹² The success of this policy of maximum productivity can be illustrated very well in the case of the Duchy of Lancaster. It was the practice after the first years of the reign, to pay the clear surplus of the revenues of the Duchy, after all allowances had been made, fees and annuities paid, and the assignments in favor of the household and wardrobe discharged, into the Treasury of the Chamber. In 1488 the Treasurer of the Chamber received £666 13s. 4d. from the Chancellor of the Duchy; in 1490 £2,800;

⁷ *Exch., Treasury of Receipt, Misc. Books*, 212.

⁸ *Rot. Parl.*, VI, 459-462.

⁹ These acquisitions from time to time can be traced in the memoranda in the back of the account books of the Treasurer of the Chamber, especially *Exch., Treasury of Receipt*, 214.

¹⁰ Campbell, *Materials for a History of the Reign of Henry VII*, I, 324.

¹¹ *Rot. Parl.*, VI, 403.

¹² *Ibid.*, VI, 465.

in 1495 £3,600; in 1499 £4,400; in 1504 £5,368 and in 1508 £6,566.¹³

The increase of the revenues from the crown estates proper as a whole, as the result of Henry VII's various measures was remarkable. The clear annual yield from the crown lands in the first years of the reign was about £10,000;¹⁴ of which £7,723 was assigned by act of Parliament as has been noted, for the payment of the costs of the household and wardrobe, leaving about £2,500 available for other purposes. This clear excess, after all expenses of collection and administration and all assignments for household and wardrobe (which in practice ranged from £7,500 to £4,650 a year) had been paid, increased very rapidly. In 1491 it was £3,764 18s. 7d.; in 1494 £7,789 17s. 7d.; in 1497 £12,746 17s. 2d.; in 1503 £20,689 8s. 11d. and in 1504 £24,145 4s. 10d.¹⁵

Much attention has been attracted to Henry VII's revival of feudal relations and his refurbishing of the royal feudal rights. Cities and guilds paid handsomely for the confirmation of their liberties.¹⁶ Every year after 1494 men were fined for not appearing to be made Knights of the Bath.¹⁷ In 1504 the king requested Parliament for the two feudal aids to which he was entitled "on the knighting of his son Arthur, now dead," and on the marriage of his eldest daughter to the King of Scotland.¹⁸ In 1486, 1500 and 1503 proclamations were issued, ordering all men with £40 a year in lands to take up knighthood.¹⁹ Henry's object in compelling men to take up knighthood

¹³ *Accounts Exch., Queen's Remembrancer*, 413/2, I; 414/6; *Add. Mss.* 21480.

¹⁴ *Duchy of Lancaster, Accounts Various* 6/1, 6/7.

¹⁵ *Accounts, Exch., Queen's Remembrancer*, 413/2, I, II; 414/6; 414/16; *Add. Mss.* 21480.

¹⁶ The men of Cheshire paid £2,000 for the confirmation of their liberties, with a pardon for their intrusions and alienations (*Accounts, Exch., Queen's Remembrancer*, 413/2, III; *Lansd. Mss.*, 127, f. 37). The merchant tailors paid £100 to have their liberties enrolled. (*Lansd. Mss.*, 127, f. 16) The citizens of London paid 5000 marks for the confirmation of their liberties. (*Fabyan's Chronicle*, 688).

¹⁷ In one year fines of £1125 13s. 4d. were collected on this account. *Accounts, Exch., Queen's Remembrancer*, 413/12, II, III.

¹⁸ *Rot. Parl.*, VI, 532.

¹⁹ Campbell, *Materials*, II, 76; Rymer *Foedera* O. XII, 770; Gairdner, *Letters and Papers, Richard III and Henry VII*, II, 379.

was not to levy fines for neglect to do, but to bring as great as possible a portion of the land of England into feudal relations with the crown as a matter of recent record. The two feudal aids requested in 1504, would have given an opportunity and legal occasion to search out all titles and tenures, and make a new record of those lands which were held directly of the crown, *in capite*.²⁰

Land holden of knight service *in capite* was subject to the incidents of wardship and marriage upon the death of the holder, if his heir was a minor or a woman; and to escheat into the king's hands, upon the holder's death without heirs. The further extension of the crown domains temporarily by wardships and marriages, permanently by escheat was the real purpose of what has hitherto been regarded as petty insistence on outgrown and forgotten feudal obligations.

The protection of the king's rights in lands held *in capite*, and the transference of all marriages, wardships and escheats, legally due, to the king's hands, was assured by the rather notorious *Inquisitiones post mortem* of the reign. On the death of a man who held land of the king or was suspected of doing so, it was usual for the Court of Chancery to issue a writ to the escheator of the district to conduct an inquiry to ascertain the extent of the possessions; and the tenures by which they were held, the heirs and their age, and whatever else might be needful that the king receive the profits justly due him. The royal policy is explained by a letter of 1495, which though written to Irish officials, is applicable to England, and explains the policy there followed. "Item to have a remembrance to see that all escheators may duly inquire upon the writs of *diem clausit extremum* and such other writs of *mandatum* after the death of the king's tenants, of their lands, and the age of their heirs and of their tenure, and that the true extents may be made thereof and so returned; and then both the ferme of the wardships where such happen and also the king's relief and

²⁰ The Commons recognized the king's purpose. Because of their great uneasiness on account of "the search and non-knowledge of their several tenures, and of their lands chargeable to the same" aids, the Commons prayed the king accept £40,000 in place of the aids. The king, defeated in his purpose, graciously covered his retreat by remitting £10,000 of the grant. *Rot. Parl.*, VI, 532; Roper, *Life of More*, 12.

such other profits shall be the more; and if ye think the escheator to be favorable to the party or insufficient or indiscreet whereby the profit of the king may be hurt by the finding of any such inquisition as is daily in England to the king's great hurt: howbeit his council think that some time if a fine be made for the recompense of the profits thereof the king shall have no loss nothing remembering the hurt of the crown which shall ensue for lack of a matter of record; but it were better for the title of the king and of his heirs to lose such profit which needeth not if true and sufficient officers be deputed, that the king's title were found of record, and to cause such sufficient persons to be commissioners to inquire after the decease of all such tenants, so that the king's title might be found of record, but that shall not be only for the profit of the king, but also of his heirs."²¹ The last sentence quoted is especially illuminating. Even though a large fine to the king for the relinquishment of his rights would in some cases yield a larger immediate gain, it was of greater importance that the king's rights be reasserted and found of record; since in that way the profits of wardships and marriages in the future would come to the king's hand, and the land itself might eventually come into possession of the crown, by escheat, either during Henry VII's own lifetime or later.

To keep a check upon the escheator, who was a local official and perhaps too well disposed to the family of the deceased, the Chancery clerks probably examined very carefully the records of previous inquisitions; and the Exchequer records too, as was commanded in Ireland.²² If, when compared with the information from these sources, the inquisition was found to be faulty, it was returned with a writ *ad melius inquirendum*. In some cases the escheator was joined by a royal commissioner or even superseded entirely, doubtless in order that the rights of the crown might be ascertained most completely. In their

²¹ Royal Mss. 18c. XIV, f. 231. The document is printed with the insertion of words which destroy its meaning in Gairdner, *Letters and Papers, Richard III and Henry VII*, II, 65-66.

²² Gairdner, *Letters and Papers, Richard III and Henry VII*, II, 66. Empson and Dudley searched in the Exchequer records for information about tenures, and Heron, Treasurer of the Chamber, seems to have had information from spies. See below p. 30, n. 45.

eagerness to profit the crown, these officials went so far as to cause untrue "offices" or verdicts to be found, sometimes returned into the courts of record offices and inquisitions that had never been found, and sometimes changed the matter of offices that were truly found "to the great hurt and disheryson of the king's true subjects, that like beforetime have not been seen in the realm," as was admitted in a law of Henry VIII's reign, designed to prevent a repetition of the injustice in the future.²³

As part of the same policy Henry VII insisted that heirs of lands held of the crown must not enter upon them without suing out their livery from the king's hands. The fines for the livery of lands (except in cases of special livery) were very small, averaging £437 a year for the last four years of the reign.²⁴ The real purpose of the requirement was that the transfer to the new heir might be a matter of record, and might not be made prejudicial to the king's rights. If the heir entered without suing his livery, no record of the king's rights in the land against the new possessor would exist, or his rights might otherwise be injured, and it was to prevent this that intrusion upon lands by heirs, that is entry without the king's writ, was punished by a large fine, by confiscation of the rents from the death of the former holder until such time as suit for livery was made, or even by confiscation of the land itself.²⁵

Though eventual escheat of lands held "*in capite*" was of first importance, the profits of wardship and marriage were not inconsiderable. In some cases the king's rights of wardship and marriage were sold;²⁶ but as a rule the king retained the lands

²³ *Statutes of the Realm*, 1, Henry VIII, c. 8.

²⁴ *Exch., Treasury of Receipt, Misc. Books*, 211, book of fines for writs of entry before the King's Bench, annis 21-24 Henry VII.

²⁵ Examples of fines of intrusion taken from *Lands. Mss.* 127 are, Sir William Say, 2,500 marks; Sir Philip Calthrop, £500; Sir Edward Harward and Alice his wife, £533. John Heron, Treasurer of the Chamber, in his account books, especially in *Add. Mss.* 21,480 has noted the names of those who have had no livery of their lands, the rents of which belong to the king until the suit for livery is made. In *Exchequer of Receipt, Misc. Books*, 253, there is a list of lands in the king's hand, "*ratione intrusionum*" annis 21-22 Henry VII.

²⁶ In the first year of Henry VII, £1,803 was realized from the sale of the king's rights of wardship and marriage. *Exch. of Receipt, Receipt Rolls*, nos. 955-958. Such sales continued throughout the entire reign.

of wards in his own hands and administered them for his own profit through his ministers and receivers, just like the rest of the crown estates of which they were practically a part for the time. From a few hundred pounds in 1487, income from ward's lands increased to more than £6,000 in the year 1507.²⁷ This may perhaps be taken as a measure of the success of the king in reasserting his ancient feudal ownership and its obligations.

Closely analogous to the feudal incidents taken from lay subjects was the practice of the king's taking possession of the temporalities of abbots and bishops when they died. The estates were administered by the king during the vacancy of the office, and when the new bishop or abbot was elected he made a large fine to the king for the restoration of his possessions. As Bacon observed, it was Henry VII's practice to advance bishops from one see to another "by steps, that he might not lose the profit of the first fruits."²⁸ The income from this source was of course subject to great fluctuations, depending upon the number of bishops and abbots who died in the course of a year. Thus in the summer of 1492 the Treasurer of the Chamber received £1,800 from the bishop of Bath's lands; in 1494 £1,200 from the temporalities of Bath and Durham, and in 1495 a larger sum from the temporalities of Lincoln. In the year 1503 the total payments of this nature to the Treasurer of the Chamber were £1,673 6s. 8d.; in 1504, £6,049 10s. 6d. and in 1505, £5,339 2s. 1d.²⁹

²⁷ Income from ward's lands under Crown management:

1487	£ 353 6s. 8d.	<i>Accts. Exch. Q. R.</i> 413/2 I.
1491	343 6s. 8d.	<i>Accts. Exch. Q. R.</i> 413/2 II.
1494	1,588 0s. 0d.	<i>Ibid.</i>
1504	3,003 0s. 0d.	<i>Exch. T. R., Misc. Books</i> , 247, pp. 72-100 Mich. 1503-1504.
1505	5,422 8s. 10d.	<i>Ibid.</i> , Mich. 1504-1505.
1506	5,626 3s. 11d.	<i>Exch. T. R., Misc. Books</i> , 248, pp. 1-98 Mich. 1505-1506.
1507	6,163 15s. 5d.	<i>Ibid.</i> , pp. 99-222, Mich. 1506-1507.

²⁸ Bacon, *Henry VII*, 19.

.. ²⁹ *Accounts, Exch., Queen's Remembrancer*, 413/2 II, III. The payments were probably even larger. In these books, with no reason given for the payment, are many sums from bishops, abbots and priors, who according to Le Neve's *Fasti* had just taken office. These were certainly payments for

Such, in a brief sketch, were the main lines of development of Henry VII's new revenue system. The fostering of trade and the increase of the customs receipts proceeded more quietly than the augmentation of the crown estates, and the extension of royal rights and claims over the land of the kingdom. In these matters, the organized disorder of the last thirty years was still an obstacle, and sometimes demanded the use of the strongest and the most unscrupulous measures by the king and his ministers.

restitution of temporalities, but because of possible doubt they have not been included.

CHAPTER IV

OBLIGATIONS AND RECOGNIZANCES: THE WORK OF EMPSON AND DUDLEY

Among the entries of payments to the Treasurer of the Chamber certain miscellaneous payments "by obligation" begin to appear in 1493. Before the end of the reign, payments upon obligations, together with somewhat similar payments "by recognizance" became very important. In the year Michaelmas 1493 to Michaelmas 1494 less than £3,000 was received at the Treasury of the Chamber in this way; but in the year Michaelmas 1504 to Michaelmas 1505 £30,824 18s. 4d. were received by obligation and £4,175 by recognizance. Obligations and recognizances were bonds, providing either for the deferred payment of some debt due to the king, or for the forfeit or payment of some sum to the king contingent upon a future event. An obligation to pay the king a certain sum in installments for customs dues belongs to the first class; a recognizance for faithful performance in office with the forfeit of the bond in case of failure to do so belongs to the second class.

Unfortunately in nearly all cases the entries of payment upon obligations or recognizances in the receipt book of the Treasurer of the Chamber run very briefly, as "Received of the Abbott of Abbingdon by Recognizance £100," and do not specify the reason for which the money was due. In the back part however, of his books of payments, John Heron, Treasurer of the Chamber, kept careful lists of all the obligations and recognizances in his hands, upon which money was due to the king. These lists, which in some cases bear the marks of the king's examination, in notes in his own hand, give a fuller description of the bonds that is found in the books of receipt. They show that obligations and recognizances were made for

the payment of money to the king, for many reasons — for the restitution of bishops' temporalities, for loans made by the king to Italian and English merchants, for the money remaining in the hands of the Mayor and Fellowship of the Calais Staple after they had paid the wages of the garrison there, for arrears of accounts in the hands of the king's receivers, for the purchase of wards, for licenses to export wool and to import wines, for deferred customs (often for very large amounts especially for customs at Southampton) and for the hire of the king's ships. Then there were recognizances for fines of various sorts, those assessed in court for offences, those made by culprits for release from prison or for pardon of their offences, fines laid upon sheriffs and especially upon bishops for the escape of prisoners from their prisons, and those assessed upon the rebels in Kent and in the southwest after the Cornishmen's rebellion. There were also bonds for faithful performance of duty in royal offices, for the keeping of the peace and for good conduct.

While all the bonds made in favor of the king appear in these lists, the reason for the bond is not always given even here, and from Heron's lists it is not possible to make any definite statement about the exact relative importance of the various classes of these obligations in relation to the crown revenue. One of the most important single classes of obligations however, was that of bonds taken by John Dawtry for the deferred payment of customs at the port of Southampton. These averaged about £7,000 a year, during the last years of the reign.¹ Obligations for loans, for the restitution of temporalities and for wardships were also very important. The returns from fines and pardons sold, excepting the fines levied on the Cornish rebels, were not very great; at least as late as Michaelmas 1505, when Heron's receipt books end.

Further light is thrown upon the subject by a study of the activity of Empson and Dudley; for it was in connection with these payments by recognizances and obligations that they worked, and it was on the basis of this work that the traditional story of their exactions grew up.

Edmond Dudley, commoner, was educated at Oxford; and trained in law at Gray's Inn, London, and so was one of the

¹ *Exch., Treasury of Receipt, Misc. Books*, 214, pp. 477, 509, 577.

great company of men versed in the new learning and in the law, who were making their sovereigns' fortunes and their own at the end of the fifteenth, and the beginning of the sixteenth centuries in all the courts of western Europe. He helped to negotiate the peace of Etaples in 1492; in 1497 he was under-sheriff of London, and in 1504 he was Speaker of the House of Commons. In the autumn of the same year he entered the employment of Henry VII in the peculiar capacity of some sort of financial agent in which he was to win so much fame.

Richard Empson was also a lawyer; somewhat older and longer in Henry VII's service. Empson became attorney general of the Duchy of Lancaster in 1485; in 1491 he was speaker of the House of Commons; in 1493 he was receiver of certain of the king's manors and in charge of the wood-sales from the king's lands.² As late as 1505-1506 he was still receiver of the wood-sales,³ but in the meantime he had risen to great offices in the state. In 1504 he was knighted, nominated High Steward of the University of Cambridge and in the same year he became Chancellor of the Duchy of Lancaster to succeed Sir Reginald Bray. As early as 1495 he was prominent enough to be named in Warbeck's proclamation as one of "the caitiffs and villains of simple birth" whose subtle inventions and pilling of the people "supported the misrule and mischief" then reigning in England.⁴ Beyond these bald facts little has been known of Empson and Dudley or their work apart from the legend which has grown up about them.

To trace the growth of the legend is in itself rather instructive. Kingsford's *Chronicles*, which are practically contemporary diaries, make no mention of Empson and Dudley, though they do record the muleting of the London mayors and aldermen, — Sir William Capel, and Thomas Kneysworth and his sheriffs, for offences in office.⁵ The continuation of Fabyan's *Chronicle* from 1485 to 1509 which was written after 1509 does not mention Empson and Dudley; but the second continuation which appeared in 1542 speaks of their execution.⁶ Arnold's *Chron-*

² *Accounts, Exch., Queen's Remembrancer*, 413/2 II, f. 41b.

³ *Exch., Treasury of Receipt, Misc. Books*, 212.

⁴ *Harl. Mss.*, 283, f. 123.

⁵ *Kingsford's Chronicles*, 205, 261, 262.

⁶ *Fabyan, Chronicle*, 695.

icle which was printed about 1521 tells the story of the "troubles" of the London mayors, and adds that this happened by the king's commandment "by means of Empson and Dudley."⁷ Finally Polydore Vergil in the *Historia Anglica* which was finished in 1533 gives the story of Empson and Dudley at some length. About 1501 Henry VII began to hate civil war more than death; and "he resolved to take such measures that all material for disorder of this kind in the future might be destroyed; and this he thought he would achieve only if he took his subjects down a little, knowing very well that men were easily made proud by abundance of possessions and loved nothing more than wealth, since their choice of peace or war was generally influenced by the fear of loss or hope of gain. But that it might not be said that he acted unjustly toward men whom he attacked, he took thought of how he might act with a show of right. As he thought upon this it occurred to him that his people were in the habit of paying so little heed to the laws of the kingdom that if the question were raised, without doubt very many not only of the distinguished men, but also of the merchants, craftsmen, farmers and fishermen would be found guilty of violating them. This resolve taken, he began to search out the laws and impose small fines on those who did not observe them. Then he appointed two fiscal judges (*fiscales iudices*), Richard Empson and Edmund Dudley men learned in the ancient law of the realm. That they might find the greater favor with the king, these men, armed with a horde of informers who reported the names of offenders, showed more zeal for collecting money than regard for justice, the danger to the state, and their proper functions, altho they were often admonished by the leading men in the nation to be less exacting. After great treasure had been heaped up however, the king, moved by the continual prayers of the people to God for an end to their misery, was stirred by thoughts of mercy and generosity, and resolved to have done with both Empson and Dudley, and to restore their money to those from whom it had been extorted."⁸

Hall translated the story from Vergil almost literally; and added to it in another place in his text a description of how

⁷ Arnold, *Chronicle*, p. XLIII.

⁸ P. Vergil *Historia*, 755ff.

Empson and Dudley would bring against a man an action of which he had no knowledge; and on his failure to appear to answer the charge he was outlawed and his goods confiscated. "These outlawries, old recognizances of the peace and good abearing, escapes, riots and innumerable statutes penal were put into execution and called upon by Empson and Dudley, so that every man, both spirituallie and temporallie having either land or substance was called to this plucking bancket according to the Psalmist's saying, all declyned and fell together and no man although he were never so clere and guiltless in conclusion durst aventure a tryall, seyng the experience of them that had passed afore. For these two ravenynge wolves had suche a guard of false perjured persons appertaining to them which were by their commandment empanyeled on every quest that the king was sure to wynne, whosoever lost. Learned men in the laws when they were required of their advice would saye to agree is the best council I can give you. By this undewe means these covetous persons filled the king's coffers and enriched themselves. And at this unreasonable and extort doynge noble men grudged, meane men kicked, poor men lamented, preachers openly at Paules Cross and other places exclaimed rebuked and detested but yet they would never amend."⁹

Bacon next took the story, added to it some badly remembered details from "a book of accompt of Empson's that had the King's hand almost to every leaf" "seen long since,"¹⁰ transfused it with his own wonderful style and made Empson and Dudley famous forever as two of the greatest extortioners in history. The finishing touch is given by Sir Robert Cotton in his little tract, "A Discourse of Foreign War," where he wrote "but that whereby he (Henry VII) heaped up his mass of Treasure . . . was by sale of Offices, redemption of Penalties, dispensing with laws and such like to a yearly value of £120,000." His authority is noted in the margin as "Ex Libr(o) Acquittance inter Regem et Dudley."¹¹

The book to which Sir Robert Cotton referred is apparently Dudley's book of accounts, a copy of which is preserved among

⁹ Hall, *Chronicle*, (Ed. of 1809), 502, 503.

¹⁰ Bacon, *Henry VII*, 192, 193.

¹¹ Robert Cotton, *A Discourse of Foreign War*, 53.

the manuscripts of the British Museum.¹² The book begins, "Memorand. that hereafter followeth all such obligations and somes of money as I Sir Edmund Dudeley have received and had of any person for any fine or duty to be paid to and for the use of our most dread sovereign lord King Henry of that name the Seventh, since the first time that I the said Edmond entered the service of our said soveran lord, that is to say the 9 day of September the 20th year of his most noble reign." The account, covering 60 folios, runs from the 9th day of September 1504 to May 28, 1508. The entries for each day are signed by the king on the middle of the page directly below them, and before the entries for the next day, in a way which shows that the account was examined by the king himself each day on which entries were made. Each folio is added, and signed by Dudley.

Obligations were made to the king's use by a number of men beside Empson and Dudley; generally in association with them, like Richard Fox Bishop of Winchester, Sir Giles Daubeney, Sir Charles Somerset, Lord Herbert, Sir Thomas Lovell and Sir Henry Wiot, as appers from those obligations which have been preserved.¹³ All obligations made by these men seem to have been taken in charge by Dudley and were delivered by him to John Heron, Treasurer of the Chamber, who collected the sums due on them. The obligations made by John Dawtry for the deferred payments of the customs due at Southampton, the obligations for the re-payment of money loaned to merchants by the king, except in a few cases, and the obligations of the Calais Staple except in the year 1507-1508, do not appear in Dudley's accounts. But apart from these very important classes Dudley entered into his book practically all the obligations and recognizances made to the use of the crown, as appears from a comparison of the totals of Dudley's accounts and of John Heron's lists.¹⁴ The figures do not agree with Sir Robert Cotton's. The sum total of all obligations, recognizances and money (for Dudley generally took a small part payment in money) received by Dudley during the year Sep-

¹² *Lansd. Mss.*, 127.

¹³ *Letters and Papers*, I, 342, 600, 642.

¹⁴ The lists kept by Heron of all obligations and recognizances for the years 1505 to 1509 are in *Exch., Treasury of Receipt, Misc. Books*, 214.

tember 9, 1504-Michaelmas 1505 was £44,882 14s. 10d.; for the year 1505-1506, £60,655 16s. 6d.; for the year 1506-1507, £65,361 13s. 7d. and from Michaelmas 1507 to May 28, 1508, £48,416 2s. The money received by Dudley varied from £2,700 in the first year of his activity to £7,500 in the second year, and £10,000 in each of the two last years. After these sums are deducted from the totals received, the remainders represent only the face value of the bonds turned over to Heron by Dudley; and not the amount the king realized on them. As Heron's lists show, many bonds were cancelled by the king, and others were suspended during pleasure so that perhaps only three quarters or even less of the face value eventually came to the king.¹⁵ In his entries except for a few at the beginning of the book, Dudley gave a full description of the consideration for which the obligation was made. It is therefore possible to make an analysis of these causes, which for the year 1504-1505 gives the following result:

Recognizances and obligations for the hire of the

Royal ships Sovereign and Regent and for customs of goods carried in them	£ 6,600	0s.	0d.
For the confirmation of the liberties of London and North Wales	5,886	13s.	4d.
For the restitution of bishop's temporalities	4,260	0s.	0d.
For faithful performance of duties by the king's officers	4,400	0s.	0d.
(This item is not included in the total for the year by Dudley)			
For pardons of murder, felony, rape and false verdicts	3,846	13s.	4d.
For special livery of lands	2,024	15s.	3d.
For wards sold by the king	1,866	13s.	4d.
For fines for the escape of prisoners	1,680	0s.	0d.
For the proceeds of the sale of goods confiscated in the ports for contravention of customs regulations	1,488	3s.	4d.
For lands purchased from the king	1,324	0s.	0d.

¹⁵ The loss of the Receipt books of the Treasurer of the Chamber after 1505 makes it impossible to compare the amounts received in money or bonds by the king with the face value of the bonds made during the years 1505 to 1508. In 1504-1505, when £42,645 in bonds were made £35,000 in money was received on bonds. But since payments of bonds taken in any one year were extended over many years, no relation can be worked out from these sums.

For re-payment for money borrowed from the king	1,000	0s.	0d.
For the payment of customs dues on wines.	928	0s.	0d.
For the purchase of offices	720	0s.	0d.
For licenses of widows to wed	586	13s.	4d.
For licenses to amortize lands	526	13s.	4d.
For fines for hunting and riots	393	6s.	8d.
For the discharge of offices found to the king's use in lands	200	0s.	0d.
For alum sold by the king	200	0s.	0d.
For treasure trove	40	0s.	0d.
For causes not stated	11,315	0s.	0d.

The other years covered by Dudley's account book show a similar variety of causes for which obligations were made and money collected by him.¹⁶

To the obligations and payments for the hire of the royal ships, for the sale of alum (which was very great during the year 1505-1506), for licences to export wheat and to import

¹⁶	1505-6	1506-7	1507-8
Calais		£3,944	
Hire of royal ships	£ 13	3,000	£ 200
Sale of alum	15,086		
Licenses to import and export wheat and wine	1,153	987	1,064
Ecclesiastical temporalities	1,333	7,166	5,566
Licence to amortize land	300	2,266	393
Sale of wards	2,177	1,110	2,686
Licences of widows to marry	1,273		1,106
Special livery of lands	1,205	1,584	1,535
Restitution of lands	6,025	3,038	
Discharge of the king's title to lands	2,833		150
For discharge of obligations	1,877	668	636
Old debts and arrears	4,370	907	1,374
Sale of charters	450	2,240	50
Bonds for good 'abearing'	2,100	500	
Bonds for good behavior in office		4,000	8,666
Fines for escape of prisoners	1,143	910	1,020
Sale of offices	2,006	2,856	936
Purchase of the king's favor	2,926	3,263	2,453
Fines and pardons	4,583	5,756	18,483
Pardons of offences in office	1,986	133	640
Fines and pardons of intrusion	4,012	7,600	
Fines for mills and Cedells on rivers	973		
Forfeit merchandise	16	220	25
Loans		3,143	5,500
Miscellaneous	5,635	2,122	655

wine and for those to pay the customs thereon in deferred payments, nor the slightest objection could be made. Nor could any protest be raised against obligations for payment for the restitution of ecclesiastical temporalities and for licences for free election of abbots and priors, for licences to amortize lands, for the sale of wards, for licences to widows to marry and for special livery of lands. The king was certainly within his rights when he insisted upon the payment of old debts and arrears of subsidies as he did from 1505 onwards. The sale of charters and liberties to cities and corporations was not contrary to law, and bonds for good behavior in office are recognized and used today. That the ends of justice be served it was necessary that prisoners be safely kept and the danger to the state of their escape had to be checked by heavily fining keepers of jails for laxness in their duties. The sale of offices by the king does not come up to the standards of present day social morality but it probably did not shock the men of the fifteenth century overmuch.

The purchase of the king's favor, for which obligations are found in 1505 and later, is much more questionable. In some cases it was quite innocent; as when the Merchant Adventurers paid £200 for the king's most gracious favor to them to be showed concerning their going into the parties of Flanders,¹⁷ and £50 at another time to have their free liberty in choosing their governor.¹⁸ In other cases the king's favor was sought by candidates for appointment to offices where the king could use his influence, as when 1000 marks were paid for the king's favor in the Deanery of York; or it was desired that the king use his influence in other ways, as when Sir Richard Haddon paid 1000 marks for the king's favor to have Wyndont's daughter wed his son.¹⁹ But when Lord Stafford paid £400 for the king's favor in the matter at variance between him and the Duke of Buckingham,²⁰ or money was accepted by the king to write letters to the justices of the peace, apparently instructing them to favor one side in a suit, or when £1,000 was paid for the

¹⁷ *Lansd. Mss.*, 127, f. 44.

¹⁸ *Ibid.*, f. 49.

¹⁹ *Ibid.*, f. 17.

²⁰ *Ibid.*, f. 49.

king's gracious favor to have the course of his laws against one Metcalf,²¹ the matter became reprehensible.

The attention of the chroniclers and of Bacon however has been turned more largely to fines and pardons for offences alleged to be against the old penal laws, than to the obligations of the various classes just noted. Obligations for fines and pardons form only a fraction of the yearly total of all obligations made by Dudley and his co-workers, and this fraction is not large, except in the year 1507-1508 when the value of obligations for fines and pardons was greatly increased by two obligations for the payment of £5,000 each — made to the king's use by the Earl of Northumberland and Lord Burgevenny.²² Few fines imposed by the king's courts were collected by Empson and Dudley. In nearly all cases they went directly to the law-breakers and compounded with them for payment for the king's pardon. Such payments or promises of payment for the king's pardon were in essence fines levied by an irregular procedure. Some of these fines or payments for pardon seem eminently just, as when Giles Lord Daubeney paid £2,000 for his pardon for the receipt of money at Calais by reason of his office which belonged to the king's grace, in other words for embezzlement.²³ Others, especially pardons for murderers, which were frequent, cannot be defended. Even here there was once shown a curious kind of practical justice, when one Orrel was pardoned "for the murthering and robbing of certeyn straungers upon the see" for £100, but was required to pay another £100 "in recompense to the friends of the same straungers."²⁴

There is no evidence of a general resuscitation of the old penal laws, as Vergil and Hall allege, in these obligations for fines and pardons. Hunting and the reversal of outlawry are insignificant factors in Dudley's accounts.²⁵ On the other hand,

²¹ *Ibid.*, f. 23.

²² *Ibid.*, ff. 51, 54.

²³ *Ibid.*, f. 34.

²⁴ *Ibid.*, f. 47.

²⁵ In 1508, however, fines for outlawry became important enough to be placed with licenses for widows to marry in charge of Edward Belknap, "surveyor of fines for outlawries and marriages of the king's wards" (that is, widows). Such fines for outlawries were apparently assessed by

the fines for maintenance of retainers, for ravishing of the king's wards and for intrusion are very large; as were the payments for restitution to lands. These last were a kind of back-handed fine for intrusions paid to the king for the restoration of lands seized for that reason into the king's hands. Large fines of these kinds, from a comparatively few persons make up a very large part of all obligations for fines and pardons. Thus Lord Daere made an obligation of £200 for intrusion of certain lands; Lord Fitzwater agreed to pay £6,000 for his restitution to his lands; Sir William Say bound himself in 2,500 marks to be freed from the charge of intrusion of certain lands of the inheritance of one Hill; for the discharge of the king's title to certain lands recovered by him, worth £120 a year Lord Dudley had to pay £1,000; the Earl of Derby agreed to a recognizance of £6,000 for his pardon; Thomas Kneysworth, Shore and Grove, aldermen of London compounded for their offences in office by a fine of £933 6s. 8d.; the Lady Percivale gave £1,000 for her pardon; the Earl of Northumberland was pardoned for the ravishing of Elizabeth Hastings, one of the king's wards, for £10,000, of which £5,000 was to be paid and the balance to hang at the king's pleasure; Lord Conyers agreed to pay £1,000 for a riot committed against Lord Darcy by him; Thomas Tyrrel paid £1,728 for restitution to his lands; Nicholas Vaux and Thomas Parre gave obligations for 9,000 marks for the marriages of the two daughters and heirs of Sir Thomas Grene and for the discharge of their lands of intrusions and other condemnations; and Lord Burgevenny who confessed to "forfaictors of his retainers" before the "lord Chiff Juge and also the Chief Justice of the commyn place" to the amount of £69,000²⁶ made a fine of £5,000 to the king for his offences and gave other bonds for sure payment of the sum, and for his good behavior in the future.

From these instances it appears that many noblemen were very badly mulcted. Henry VII had in this the ulterior purpose of drying up the springs of political opposition by reducing the king himself. From July 1, 1508, to March 10, 1509, £2,910 15s. 5d. was received from goods, chattels and fines of outlawed felons. *Accts. Exch. Q. R.* 517/14, and 517/15, Belknap's account books.

²⁶ *Exch., Treasury of Receipt, Misc. Books*, 214, p. 534.

the great nobles if not to poverty, at least to a wholesome fear. But two other facts stand out in the cases cited. Breaking the peace, keeping retainers, creating disorder by the ravishing of women, especially those who were the king's wards, and other breaches of the law were severely dealt with; and in the second place intrusion of lands was especially harshly punished. After the disorders of the wars of the Roses, it was of primary importance that the turbulent nobles should be kept in check and made to fear the law. The royal courts were too slow-moving, and perhaps too weak to do this. Much earlier in the reign, after the rebellion of the Cornishmen, Henry VII had not relied upon the courts to assess fines upon the rebels, but had sent Paulet and Sherborne as royal commissioners to make the king's power felt and to fine all who had taken part in the revolt. Just as they had asserted the royal authority in the Southwest, so Empson and Dudley vindicated it against the nobles, more directly, more quickly and more quietly than any court, even the Star Chamber could have done. Moreover the fines they assessed came entirely to the royal treasury and were not subject to deductions as were the fines assessed by judges before they reached the treasury. Besides the establishment of respect for the law, the fines for intrusion had a second object, to force heirs to properly sue out the livery of their lands, the importance of which in the light of the Tudor policy to base the revenue system on landed estates has already been pointed out.

In judging Empson and Dudley's work and activities, it should not be forgotten that fines and sales of pardon occupied only part of their attention, and that there were many other important classes of payments made to them. Moreover the king was thoroughly cognizant of all their activities, as is shown by his daily examination of Dudley's book. They were not mere irresponsible extortioners. They were the king's business and collection agents, who went up and down the country taking care that no money due to the crown went unpaid and no royal right violated. They were the king's long arms with which he reached out from one end of England to the other and took what was his. When the accounts of the Staple at Calais were cast, Dudley was present and probably drew up the recognizances

by which the Merchants of the Staple bound themselves to payment;²⁷ when the recognizances forfeited in the king's bench for the first twenty years of the reign were examined, Dudley took charge "to make out process" for all that be unpaid;²⁸ When it was reported to the king that Sir E. had taken no livery of his lands, Empson searched the records;²⁹ when obligations in Heron's hands were not promptly paid they were delivered to Dudley to be put in suit,³⁰ and when the king's greatest mercantile transaction was made, the sale of £15,166 13s. 4d. worth of alum to Lewis de la Fava, Dudley was Henry VII's agent and received de la Fava's bond.³¹

Their activity against the great nobles did not make Empson and Dudley popular, and their unpopularity was greatly increased by the chicanery to which they stooped to accomplish their ends. They doubtless spent a great deal of time in searching the records, and apart from the fines levied for intrusion there is some evidence to indicate that when a defective title was found (going back even a long time) process to dispossess the present holder was begun for the king's benefit, and their own, since they received grants out of such lands recovered.³² In the Plumpton Correspondence there is the account of how Empson tried to dispossess Sir Robert Plumpton of his lands for the benefit of the heirs general of Sir William Plumpton his father, to one of whom Empson was planning to marry his daughter. "Accompanied by Edward Stanhopp, Gervis Clifton, Robert Dimmoke and William Perpoynt knights and other gentlemen and yeomen to the number of 200 persons and more, and divers of the garde of our Sovereigne Lord the King arrayed in the most honorable livery of his said garde (he) came to Yorke to main-taine the foresaid Robert and Richard (that is the representa-

²⁷ *Add. Mss.*, 21480, f. 159.

²⁸ *Accounts, Exch., Queen's Remembrancer*, 516/17.

²⁹ *Add. Mss.*, 21480, f. 191.

³⁰ *Lansd. Mss.*, 127, f. 35.

³¹ *Ibid.*, f. 29.

³² *Letters and Papers*, I, 1965, 3284. Lands recovered by Empson, Dudley Wiot, Andrew Windsore, Sir James Hobart, Thomas Lucas, William Merdaunt, William Gascoigne, Richard Fox Bishop of Winchester and others, some of which were granted to Empson and Dudley and their co-workers.

tives of the heirs general) in the said assise, and theare abode with the said companie at their costs and charges to the time that the said assise passed against the foresaid Sir Robert.”³³ Judge Vavosour who appeared with Empson and Dudley more than once in cases of disseisin,³⁴ “then shewed in open courte a fine exemplified under the greate seale of England, saing that therin wear comprised the foresaid manors taled to the heires generall of Sir William Plompton and the Counsell of the foresaid Sir Robert desired hearing thereof and might not have it by any meanes.”³⁵ Before the trial Sir Robert was warned “to labor as well the Schereffes as all your frynds,” since Empson would avail himself of the favor it was possible for him to show as one of the king’s council sitting to assess fines upon such as had not taken up knighthood, and would have persons thus made friendly put upon the jury. “Thus he under myneth.”³⁶ The Plumpton case is only one instance in which these men reaped dislike by taking care of themselves. A second such case came to notice in 1527 when John Maryng petitioned the Lord Chancellor that twenty-eight years ago Edmund Dudley craftily attempted to disinherit him of certain lands by inducing a man named Fowler to lend him £10 on mortgage to be repaid within a year. Shortly after the loan he was imprisoned in the Tower; and Dudley redeemed the lands although he had the redemption money ready himself. Dudley obtained the deeds during his imprisonment and forged a conveyance in his name.³⁷ The sale of justice outright, cases of which have been quoted in connection with the sale of the king’s favor, as in the case where £1,000 was paid “for the king’s favor toward John Layton, to have the course of the king’s common law in assise against one Metcalf” probably served to increase still more popular displeasure. Dudley himself repented of this, and in the Tree of Commonwealth, a little book written by him in the Tower before his execution, he advised Henry VIII to give judges “a great charge to minister justice

³³ *Plumpton Correspondence*, p. CVII.

³⁴ *Letters and Papers*, I, 1965.

³⁵ *Plumpton Correspondence*, p. CVII.

³⁶ *Ibid.*, 151, letter cxlx.

³⁷ *Letters and Papers*, IV, 3727. If this incident took place 28 years before 1527, that is in 1499, Dudley was not then in the king’s service.

truly and indifferently under pain of his high and great displeasure," and to take care that "they let not for fears nor displeasure of any of his own servants or counsellors to do true Justice nor for fear of any great person in the realm."³⁸ Finally Dudley was not even above forging obligations, as is shown by annotations made by Brian Tuke, Treasurer of the Chamber on the margins of certain old obligations in 1530, "Not subscribed and the seale of Mr. S. saithe it was on of them that was counterfaict by Dudley," and "discharged by matter of recorde in the common place as counterfaict By Dudley,"³⁹ At times Henry VII seems to have been troubled by some of his methods of getting money. On August 19, 1504, which was before Dudley came to his service, a proclamation was issued that all who had claims against the king for any loan or prest, or injury done to them might deliver their complaints during the term before Michaelmas two years hence to certain commissioners.⁴⁰ In his will Henry VII made provision for a similar proclamation.⁴¹ But that he did not intend to have such money as was collected by Empson and Dudley very much questioned and disputed, seems clear from the appointment of Empson and Dudley as executors of the will, and as commissioners to examine any complaints.⁴²

Practically all that is known of the next events comes from Vergil again. "When the proclamation was read, all who had been in any way mulcted, rightly or wrongly (*jure vel injuria*) rushed to court and set forth each for himself the injury done him, asserting with wails of complaint, that his own case merited restitution. The Council heard the cases and ordered restitution, where manifest wrong had been done. When this was known, great Cæsar! the way the others, even those who had been justly punished stormed about and pressed their claims! To recover their losses they added all sorts of flourishes to their

³⁸ Edmund Dudley, *Tree of Commonwealth*, 11-12.

³⁹ *Letters and Papers*, IV, 6798. The original document is in the Record office, *State Papers, Henry III*, IV, §59, pp. 22-27, and the annotations there, which do not appear in the calendars were called to my attention by Professor E. F. Gay.

⁴⁰ Gairdner, *Letters and Papers, Richard III and Henry VII*, II, 379.

⁴¹ Thomas Astle, *Will of Henry VII*, 11-12.

⁴² *Ibid.*, 11-12.

stories. They distributed money freely (*largitiones faciunt*), used the influence of their friends and finally stopped at nothing. Their excessive zeal and greed worked destruction to Empson and Dudley and loss to themselves. The Council giving up the hope of being able to moderate the popular outcry and satisfy the demands of those who sought restitution, decided to hear no more cases but to arrest Empson and Dudley with their informers and agents to placate the excitement and desire of the people, who called for their punishment more than anything else."⁴³

Some clue is given to the nature of "the people" (*plebs populus*) by the sentence, "they distributed money freely and used the influence of the friends." "The people" were those classes against whom Empson and Dudley had been most active in asserting the rights of the king. Lord Dacre was probably typical of those who cried out against Empson and Dudley. In a letter to the council he prayed for the discharge of various obligations and recognizances, some of them surety bonds which he alleged had been retained although the purpose for which they had been made had ceased to exist, or had been turned into debts by Empson and Dudley "against all right." Another was a bond for 1,000 marks in which he was bound with George Lord Fitzhugh for his mother, Dame Mabel Dacre accused of having ravished Richard Huddleston, one of the king's wards. He had paid 600 marks of the bond and requested to be discharged of the remainder since Huddleston was never a king's ward.⁴⁴ It was with men of Dacre's class that the execution of Empson and Dudley, which was ordered not on the charge of extortion for which there could have been no real evidence which did not compromise the late king and his whole policy, but on a trumped-up charge of constructive treason was best liked.

By his repudiation of Empson and Dudley, Henry VIII at once won a reputation for liberality. The Venetian Ambassador in England reported the new king's great liberality,⁴⁵ and William Lord Mountjoy wrote to Erasmus just after the ar-

⁴³ P. Vergil, *Historia Anglica*, p. 2 of the second part.

⁴⁴ *Letters and Papers*, I, 380.

⁴⁵ *Venetian Calendar*, I, 942, 945.

rest of Empson and Dudley. "All England is in ecstacies. Ex-tortion is put down — liberality is the order of the day."⁴⁶ The stern justice of Henry VII's day was no longer needed to insure respect for the laws; and, like the true Machiavellian that he and all the Tudors were, Henry VIII broke the tools by whom in large part the supremacy of the law had been established. Some of the land won by Empson and Dudley for the crown was returned, notably to Lord Darcy and his wife;⁴⁷ some of the unpaid portions of large fines for intrusion were remitted; for example to Vaux and Parre for the intrusions of their wives;⁴⁸ the Earl of Northumberland's fine of £10,000 for ravishing Elizabeth Hastings was pardoned,⁴⁹ and nine of the smaller recognizances were cancelled since, because of their manifold injustice they "may not be levied without the evident peril of our said late father's soul which we (Henry VIII) would for no earthly riches see nor suffer."⁵⁰ Many other bonds were put in respite, but not discharged,⁵¹ while others perhaps the greater part were levied and put in suit if not paid promptly.⁵² They probably represented debts justly owing to the crown, for after all the great bulk of Empson and Dudley's work, and certainly the great bulk of all obligations made to the king's use in Henry VII's reign were for just and legitimate causes.

Order had been reëstablished and the crown lands vastly extended. The terrorism of great fines was no longer necessary and was repudiated. But the practice of collecting the king's debts and dues in installments by means of obligations continued, and the Treasurer of the Chamber long kept lists of obliga-

⁴⁶ *Letters and Papers*, I, 5736.

⁴⁷ *Ibid.*, I, 367, 721.

⁴⁸ *Ibid.*, I, 600, 612, 1026.

⁴⁹ *Ibid.*, I, 945, 961.

⁵⁰ *Ibid.*, I, 1004, 1372. See also *ibid.*, I, 5522. Other recognizances were cancelled in the course of the first four years of the reign to which this note was not attached. These were in some cases expired surety bonds, and in other cases, apparently just debts; in other cases it is impossible to tell their nature.

⁵¹ *Ibid.*, I, 777, Book of such obligations as were respited but not discharged.

⁵² *Ibid.*, I, 3497. Echoes of bonds put in suit reached as far down as 1530, — see *ibid.*, IV, 6798.

tions and recognizances in the back of his account books, just as he had done in Henry VII's time — for the repayment of loans made by the king, the sale of wards, the livery of lands and deferred payment of customs.⁵³

In Mary's reign, after long disuse in the later years of Henry VIII's reign, obligations and recognizances reappear as the "stalled debts" which figure largely in government finance through the second half of the sixteenth century.

⁵³ *Ibid.*, II, pp. 1481-1490; III, pp. 1545-1546.

CHAPTER V

TAXES, LOANS AND BENEVOLENCES, THE FRENCH PENSION

The new financial system for which the foundations were laid in 1485, and the work of Empson and Dudley did much to build up, took some years before it yielded an adequate revenue. Until it did, Henry VII was not able to abandon older devices to eke out his resources. At the beginning of the reign, the Marquis of Dorset and Sir John Bouchier were in Paris as pledges for money borrowed,¹ and to the Duke of Brittany Henry owed sums exceeding 10,000 crowns of gold on promises "as a prince to repay . . . as soon as he had obtained the kingdom."² The coronation was planned on a scale that would show an "estate royal" and befit a king. The royal jewels had been pledged by Richard III, and had to be redeemed,³ and some of Richard III's debts were ordered paid. The king was obliged to resort to short time loans, as Edward IV and Richard III had often found it necessary to do. The Archbishop of Canterbury for example lent the king £100;⁴ the Bishop of Winchester 100 marks, and Italian merchants in London, sums ranging from £100 to 500 marks.⁵ The merchants of the Staple at Calais advanced above £1,000 for wages and fees of the Calais garrison,⁷ while the mayor and aldermen of the city of London lent £2,000,⁸ in addition to the gift of 1,000 marks voted by the

¹ Bacon, *Henry VII*, 18.

² J. Gairdner, *Life of Henry VII*, 19.

³ *Exch. of Receipt, Receipt Rolls*, no. 949; entry of receipt of loan on pledge of jewels by Richard III.

Hist. Mss. Commission, *Mss. of Lord Edmond Talbot*, 296.

⁴ *Exch. of Receipt, Receipt Rolls*, no. 955.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Campbell, *Materials*, I, 233, 266, 273.

⁸ *Exch. of Receipt, Receipt Rolls*, no. 955; Kingsford's *Chronicles*, 193.

common council of the city before Henry's entry.⁹ Reginald Bray, Allen Cornburgh Clerk of the treasurer, Lord Dynham the lord treasurer, the cofferer of the household and other financial officials lent large sums. All these loans, amounting to £10,121 17s. 4d. during the first year of the reign, were for short periods, a few weeks in some cases, and all were repaid.¹⁰

In 1486 and 1487 the king had to meet the expense of his marriage to Elizabeth of York, his progress to the north, and the suppression of the insurrection of Lambert Simnel and of the disorders in Ireland. Toward the end of 1486, commissioners, with letters under the king's signet were sent into various parts of England to raise money for the king by "agreements." Though the amount raised was small, this loan is important as being the first of the forced loans which figure so prominently in the Tudor period.¹¹ In the early part of 1489 commissioners again visited the various shrines to collect loans.¹² Much greater in amount than the loans from the people during these years, were the advances made to the king by Reginald Bray, Lord Dynham, the great ecclesiastics, and the city of London.¹³ The city of London lent the king £4,000 in 1487,¹⁴ £2,000 in July 1488,¹⁵ £4,700 in February and March 1489,¹⁶ £1,000 in August 1489,¹⁷ and £2,000 in 1490.¹⁸

⁹ Campbell, *Materials*, I, 6, *Journ. Civit. London*, IX, 84, August 31, 1485.

¹⁰ *Exch. of Receipt, Receipt Rolls*, nos. 955, 958, Michaelmas 1485 to Michaelmas 1486. All the loans are noted with the date of their repayment.

¹¹ The amount borrowed from individuals was small, the average being 20 shillings; though in London, it was about £5. The costs of collection were very large, being £29 5s. 10d. to collect £264 in Bedfordshire and Buckinghamshire and £18 6s. 8d. to collect £203 in Lincolnshire. Of the money raised from this loan £3,250 were paid to the Treasurer of the Chamber and £2,031 at the Receipt of the Exchequer. See Campbell, *Materials*, II, 91, 92, 95, 96, 97, 105, 106; *Accounts, Exch., Queen's Remembrancer*, 413/2 I, Receipt book of the Treasurer of the Chamber; *Exch., Treasury Receipt, Misc. Books*, 125, payments at the Exchequer.

¹² *Exch. of Receipt, Receipt Rolls*, no. 964.

¹³ *Ibid.*; *Exch., Queen's Remembrancer*, 413/2, I.

¹⁴ Kingsford's *Chronicles*, 194.

¹⁵ *Ibid.*, Fabyan, *Chronicle*, 683.

¹⁶ *Exch. of Receipt, Receipt Rolls*, no. 964.

¹⁷ *Exch. of Receipt, Receipt Rolls*, no. 966.

¹⁸ *Exch., Treasury of Receipt, Misc. Books*, 124, p. 19.

More important in the early years of the reign, is the ingenious use of foreign complications by the king for his own pecuniary advantage. As Bacon phrases it, Henry VII used wars and rumors of wars to exact grants from Parliament for the defense of the realm, while peace, succeeding, "coffered up" the sums so received.¹⁹ Henry VII's success in this respect was so well known in his own day that Sanuto commented in one place in his diaries, "under the pretence of this war (against Scotland) he amassed much money."²⁰ The Milanese Ambassador in England, Raimondo de Soncino, speaking of a rumor of war between England and Flanders in 1498 is sure that nothing will come of it, except that under the "name of war, possibly by way of fifteenths a certain sum of money may find its way to the king's purse; but the sovereigns are certain to come to terms and the losers (the taxed subjects) will have to bear their loss."²¹ Perkin Warbeck made it one of the charges against Henry VII, in his proclamation of 1495, that the king "hath trodden under foot the honor of this nation, selling our best confederates for money, and making merchandise of the blood, estates and fortunes of our peers and subjects, by feigned wars and dishonorable peaces, only to enrich his coffers."²² Taxes were legitimate and justifiable war measures, and it was as war measures that Henry VII obtained them. Careful of the susceptibilities of his tax-voting and tax-paying subjects, Henry stimulated his people's patriotism against France and Scotland before asking for grants. The Parliamentary votes were then made almost automatically. Little did his subjects know how disingenuous were the purposes of the king until after the event. Besides taxes wars were made to yield further profits to the king in the way of a benevolence and of indemnities of no mean value.

The first parliamentary tax was voted in November, 1487, after the battle of Stoke, in which Lambert Simnel had been

¹⁹ Bacon, *Henry VII*, 51.

²⁰ *Venetian Calendar*, I, 743.

²¹ *Ibid.*, I, 776.

²² Bacon, *Henry VII*, 141-142. Bacon asserts that he had seen a copy of the proclamation. The extract quoted does not however appear in the transcript of the proclamation preserved in the British Museum, *Harl. Mss.*, 283, f. 123 b.

defeated. Two whole fifteenths and tenths, and a poll tax on aliens, such as had been used by Henry VI, were granted "for the hasty and necessary defence of this your realm."²³ In December 1486 and February 1487 the convocations of the clergy of Canterbury and York had met at the king's summons, and each voted one entire tenth of the value of their benefices.²⁴

The very success with which the king obtained these taxes, and the improvement in the financial situation which appears very noticeably after they were collected, may have made him the more willing to obtain new levies when he was enabled to do so easily by reason of the situation in Brittany. When the question of the annexation of Brittany to France became acute, early in his reign, Henry VI offered his mediation. He did not desire to see Brittany annexed to France any more than did other Englishmen. Mediation was a politic way of maintain his truce towards both sides, France and Brittany, to each of which he was under obligations; and at the same time, it kept his hand in the game of European politics, while it might put off the absorption of the Duchy of France.²⁵ But the cause of Brittany was very popular with Henry's subjects; they demanded intervention, rather than mediation; and the Commons even desired that he should command the troops in person.²⁶ Ambassadors were sent to Spain to seek an alliance there, though not exclusively on account of the Breton question; and commissioners were dispatched to Brittany and to Maximilian, Henry's natural ally. When Parliament assembled on January 13, 1489, its chief business was to make provision for the war; especially to provide funds for its prosecution. A grant of £100,000 was asked for. It was a very large amount of money, more than three fifteenths and tenths. All agreed to vote the sum, even extending it for two years additional, if the army were maintained that long.²⁷ There was a long dispute between the laity and the clergy about the proportion to be assessed on each; each wishing to escape as much as possible of the heavy burden of

²³ *Rot. Parl.*, VI, 401.

²⁴ Wilkins, *Concilia*, III, 618, 621.

²⁵ Ant. Depuy, *Historie de la Reunion de La Bretagne a la France*, II, 165-166.

²⁶ *Ibid.*, II, 163, 164.

²⁷ *Rot. Parl.*, VI, 421ff.

the war for which they were clamoring.²⁸ It was finally agreed that the laity should pay three-fourths of the grant, and the clergy one-fourth. On February 8, 1489 the treaty of Redon was signed. By its terms a defensive league was made by Henry VII with the Duchess of Brittany, and in return for numerous concessions that the Duchess would not marry without Henry's consent, and that she would aid him if he should ever seek to recover his lost French possessions, Henry agreed to send her 6,000 men to serve until All Soul's Day next, at her own expense. As security for the payment of the cost of these troops, two strong places in Brittany were to be handed over to Henry VII, to be held and garrisoned by him.²⁹ A treaty with Maximilian was signed February 14,³⁰ and with Spain, March 27, 1489.³¹ When the treaty of Redon, and the meanness of the operations of the English forces which aided Maximilian in Flanders are compared with the parliamentary grant, the conclusion is suggested that Henry VII had no heart for the war and was already chiefly thinking of his own enrichment.

Maximilian deserted Henry at the peace of Frankfort, July 22, 1489. After this the war, hitherto actuated by more than financial motives, became a purely business proposition. "Weighing one thing with another, he (Henry VII) gave Britain up for lost; but resolved to make his profit out of this business of Britain."³² To the French ambassadors who came to London in August, 1489, to urge the English king to accept the peace of Frankfort, Morton insisted upon the renewal of the tribute once paid by Louis XI to Edward IV in recognition of the king's title to France as a *sine qua non*.³³ When no agreement could be reached, Parliament, assembled in October 1489, voted supplies for the continuance of the war. The tax of £100,000 had been an innovation. It was now admitted to be a failure, for only £27,000 had been collected of the £75,000 to be paid by the laity. For the remission of the remaining £48,000 a grant of one

²⁸ *Venetian Calendar*, I, 550. Papal Collector de Gilis to Innocent VIII.

²⁹ Rymer, *Foedera*, O. XII, 362.

³⁰ *Ibid.*, XII, 359, 361.

³¹ *Spanish Calendar*, I, 34.

³² Bacon, *Henry VII*, 84.

³³ *Ibid.*, 36.

fifteenth and tenth was made by Parliament.³⁴ The clergy of Canterbury and of York each granted one tenth.³⁵ Henry VII however, was sure of his hand, knowing the eagerness of Charles VIII of France to be free to undertake his Italian expedition, which had been revealed to Henry by the French embassy of 1489. Henry therefore continued to aid Anne of Brittany, taking good care to secure her bonds and promises for repayment.³⁶ When Charles VIII by capturing and marrying the Duchess made it impossible for Henry to put pressure on him from that quarter to renew the tribute, Henry VII determined to invade France in person, and recover his kingdom of France.

In this patriotic cause, Henry could ask for benevolence without much fear of opposition despite the unpopularity of the benevolence under Edward IV, and the condemnation of the practice by Richard III's first Parliament. In July 1491, commissions were issued "for obtaining contributions for a war against France," setting forth "that Charles of France not only unjustly occupies the king's kingdom of France, but threatens the destruction of England."³⁷ In December other commissioners were sent to Yorkshire.³⁸ When Parliament assembled the king told his just cause for waging war. "The cause of this battle did every man allow, and to setting forth the same promised all they could make."³⁹ A liberal grant of two fifteenths and tenths was made, with the promise of a third if the army remained abroad more than eight months.⁴⁰

The invasion of France by an English army in 1492 was a gorgeous military show. It soon accomplished its purpose. Charles VIII sent early proposals of peace; he would pay certain arrears of the pension due by Louis XI to Edward IV, and assume the debts of Anne of Brittany. By the treaty of Etaples he acknowledged that he owed for the costs of the war, the

³⁴ *Rot. Parl.*, VI, 438.

³⁵ Wilkins, *Concilia*, III, 625, 630.

³⁶ Rymer, *Fœdera*, O. XII, 435, 436, 438, 442, 443.

³⁷ *Ibid.*, XII, 446; Gairdner, *Letters and Papers, Richard III and Henry VII*, II, 372. The commissions are dated July 7, 1491.

³⁸ Rymer, *Fœdera* O. XII, 464.

³⁹ Hall, *Chronicle* (Ed. of 1809), 451.

⁴⁰ *Statutes of the Realm*, 7 Henry VII, c. 11.

debts of Anne, the expenses of ambassadors, 620,000 Ecus d'or; and for the obligations of Louis XI to Edward IV 125,000 Ecus d'or, or 745,000 Ecus d'or in all.⁴¹ This sum was to be paid at the rate of 50,000 francs yearly, in semi-annual installments due May 1, and November 1.⁴² This "pension" was regularly paid by Charles VIII, and on his death, Louis XI renewed the obligation.⁴³

The peace was not popular in England. "Men stuck not to say 'That the king cared not to plume his nobility and people to feather himself.' And some made themselves merry with what the king had said in Parliament, 'That after the war was once begun, he doubted not but to make it pay itself,' saying he had kept promise."⁴⁴ And he had, even though his profits were not so large as Bacon believed them. On the one hand he had received generous grants from Parliament and from the clergy, collected a benevolence of £48,484,⁴⁵ and received the assurance of a pension of 50,000 francs a year for a long term of years. On the other hand, in the preliminary contest in Brittany something was spent, and the invasion of France in 1492 cost £48,802.⁴⁶ The difference was the king's profit.

⁴¹ £159,000 sterling.

⁴² Rymer, *Foedera*, O. XII, 506, The treaty of Etaples.

⁴³ *Ibid.*, 684.

⁴⁴ Bacon, *Henry VII*, 103.

⁴⁵ *Cott. Mss.*, *Cleopatra F. VI*, f. 314 — "King Henry VII in the 16th year had Benevolences of the clergy, nobility and commons towards his wars in France amounting to the sum of 48,484 pounds, besides the fifteenths and tenths at the same time. The book of this appeareth in the treasury as Westminster with the chamberlains." There was however no benevolence in the 16th year, and no fifteenths and tenths, but both were taken for the French war in 1491-1492, in the sixth year of his reign. The book referred to is perhaps, *Exch. of Receipt, Misc. Books*, I, which records receipts from the benevolence. Some pages are missing; the total of that part of the book which is preserved is £41,930 18s. 1d., paid in money. Another record (*Accounts, Exch., Queen's Remembrancer*, 516/23) shows the receipt by the collectors of £6,396 9d. worth of plate. The two sums added approach closely the figure given in the quotation above.

⁴⁶ The account of the expenditures in Brittany is preserved in the Chapter House at Westminster, but the genial keeper, Dr. Brown, refuses to allow access to it, or to other documents such as letters of Empson and Dudley, preserved there. The account for the expenditures for the invasion of France is in *Accounts, Exch., Queen's Remembrancer*, 516/23.

More successful financially was the Scotch war of 1496 and 1497. Upon the news of a raid by James IV across the English borders in 1496, Parliament granted two fifteenths and tenths, with the usual exceptions and deductions, and, in addition "an aid and subsidy of as great and large sums of money as the said two fifteenths and tenths" with the abatement and reduction of £12,000, but no other reductions. This meant that the exempted towns were to pay the tax, paying as much toward the subsidy, as their fifteenths and tenths would amount to.⁴⁷ At the same time, the clergy of Canterbury made a grant of £40,000, despite the grant of a tenth in the year before.⁴⁸ Taking the fifteenth and tenth at £29,000 the entire clerical and lay grant at this time was nearly £160,000. The book of payments of the Treasurer of the Chamber shows the dispatch of money for soldiers wages, a total of £41,300.⁴⁹ The "rigging forth" of the navy took £4,408,⁵⁰ and the revolt of the Cornishmen, who objected to being taxed for the defence of the Scotch frontier, and the defeat of Perkin Warbeck cost £13,155 more.⁵¹

It might be noted in passing that after the suppression of the Cornish rising, Henry VII characteristically turned it to his own pecuniary advantage by sending Amis Paulet and Robert Sherborne, the Dean of St. Paul's and other commissioners "to plague and scourge them according to the quality of their crime and offence with great fines and assessments."⁵² The commissioners visited every hundred, and levied fines on very great numbers of people. One roll in which fines of £8,810 are assessed contains over 3,400 names.⁵³ In all the Cornishmen and Warbeck's adherents were fined £14,699, payment of which was extended over many years. The last payment was made in 1507; as is shown by a note in the king's own hand at the end of one of the rolls.⁵⁴

⁴⁷ *Rot. Parl.*, VI, 514, 515.

⁴⁸ Wilkins, *Concilia*, III, 645.

⁴⁹ *Accounts, Exch., Queen's Remembrancer*, 414/6.

⁵⁰ *Accounts, Exch., Queen's Remembrancer*, 414/6.

⁵¹ *Exch., Treasurer of Receipt, Misc. Books*, 126, pp. 40, 74-78.

⁵² Hall, *Chronicle* (Ed. of 1809), 486.

⁵³ *Rot. Reg.* 14 B. VII. This roll is calendared in Gairdner, *Letters and Papers, Richard III and Henry VII*, II, App. B, 337.

⁵⁴ There are four rolls of the fines; *Accounts, Exch., Queen's Remem-*

In the large, the use of foreign troubles for financial ends is merely an episode in the history of Henry VII's reign. The king was willing to profit by them when they came ready to his hand, but considerable risk attended their use. With the improvement in the situation, which became very marked even before the Scotch war of 1496-1497, Henry VII preferred to abandon them and the devices and dangers they involved.

brancer, 516/24, to which the king's note is appended, 516/27, 516/28, and *Rot. Reg.* 14 B. VII.

CHAPTER VI

THE NEW ORGANIZATION OF THE FINANCIAL SYSTEM

De Ayala, the Spanish ambassador once described King Henry VII as spending all his time, when not in public or in his council chamber, in writing the accounts of his expenses with his own hand. The description is scarcely overdrawn; for while Henry VII did not actually write his own accounts, he spent a very large part of his time in examining, annotating and marking with his sign manual the account books of his several revenue officials. While his earliest, and always his chief interest was given to the new revenues which he himself had developed, he gradually extended his attention to the older revenues and their expenditure. Before the end of his reign, consequently, he had worked fundamental changes in the organization of the financial system, as a result of which the king in person was his own chief treasury official. He personally knew all his receipts and expenditures; he personally gave acquittances or discharges to the special treasurers, and to him, as the final officer of audit the great treasuries and revenue courts themselves submitted their accounts. The independence of the Exchequer was broken down in all its essential parts, and it, together with the new revenue bodies, were brought under the unified control of the monarch himself.

When Henry VII became king the great financial institution of the government was the Court of the Exchequer. It consisted of two distinct divisions, the Exchequer of Account, and the Exchequer of Receipt. The leading officials of the Exchequer of Receipt were the Under Treasurer, the two Chamberlains, and their clerks, and four Tellers.¹

¹ The Lord Treasurer, being a great official, busied in other affairs of state, had ceased to attend personally to his duties in the Exchequer of Receipt. His work was performed by his clerks, one of whom became the

When the sheriff, collector of customs or other accountant came to London on the summons of the court, with his account and the money due to the king, he went first to the Exchequer of Receipt, and paid his money to one of the Tellers. The Tellers entered the amount of money which they received into a small paper account book.² Here we have modern business methods; but in the figurative back room, known as the Court of the Receipt there was a complete set of medieval machinery which had to be put into motion before the accountant could have a receipt for his money. After the teller had made the entry into his paper book, he copied the entry upon a slip of parchment, giving briefly the particulars of the payment.³ This slip or bill was either "cast into the court of Receipt by a trunk made for that purpose" or according to other document given to the accountant to be by him carried to the Court of Receipt and handed to the Treasurer's Clerk for writing the Tallies, the *Clericus ad Tallia Scribenda*. A second clerk of the Treasurer, the Clerk for Writing the Pells entered the bill, letter for letter into a record called the Pell, or Treasurer's Roll of Receipts, and two Clerks for Writing the Controllment of the Pells, each representing one of the Chamberlains entered it into two other records, the so-called Receipt Rolls. The Usher of the Receipt then cut notches representing the sum paid as stated in the bill and read aloud by the Clerk for writing the Tallies into the side of a square stick of hazel wood, or tally. When the tally was properly notched, the Clerk for Writing the Tallies copied the bill upon the two sides of it word for word. Finally the Clerks of the Chamberlains for Splitting the Tallies, the *Clerici ad Tallia Scindenda* compared the notches in the tally and the two inscriptions upon the sides of it with the bill, and the three entries in the three receipt rolls. If all agreed the Clerks for Splitting the Tallies split the tally down the center

Under Treasurer. The Under Treasurer is sometimes called Clerk of the Treasurer even in the early years of Henry VIII's reign. *Exch. of Receipt, Declarations of the State of the Treasury*, II, III, IV.

² Examples of these account books, many of which are preserved for the reigns of Henry VII and his successors are *Exch., Treasury of Receipt, Misc. Books*, 124, 125.

³ Many files of these slips are preserved as "Tellers Bills," among the manuscripts of the Exchequer of Receipt in the Public Record Office.

of the notched side, so that each half carried a record of the payment. One half, called the stock was given to the accountant, and the other, the foil, was deposited in the court, to be sent to the Exchequer of account, there to be compared with the stock by the Chamberlain's Clerks for Joining the Tallies when the accountant should present his account for audit.⁴

In earlier times, the money received at the Exchequer of Receipt was kept in the custody of the Lord Treasurer and the Chamberlains. But in Henry VII's reign or before, the Lord Treasurer and Chamberlains "were clearly discharged of their account of the king's money," and the money received by the Tellers remained in their own custody.⁵ It was paid out by them on warrants of the king under the great and privy seals, formally directed however as in the past, to the Treasurer and Chamberlains. When the Tellers issued money, they simply entered the payment, giving the name of the person, the amount and other particulars into their paper account books, and had the man who had received the money either sign the book directly below the entry, or sign a simple paper receipt.⁶ In earlier times, when the Lord Treasurer and Chamberlains still had the custody of money, a very elaborate process was necessary before money could be disbursed at the Exchequer by the Tellers, and the record of the payment was entered into issue rolls in triplicate, very similar to the three receipt rolls.⁷ But now that the Tellers had actual custody of the money and were responsible for it, the simpler system of keeping accounts of issues was possible.

⁴ The practices of the Exchequer of Receipt are taken from a bundle of documents in the Record Office, *Exch. of Receipt, Miscellanea*, 396, relating to a dispute between two officials in the time of Elizabeth. In these it is stated on the evidence of men who had been in the court in Henry VII's reign, that practices were the same in the reigns of Henry VII and Henry VIII. Especially valuable are the papers numbered 2, 7, 17, 82.

⁵ The earliest evidence that the Tellers actually retained custody of the money is in one of the Teller's account Books, *Exch., Treasury of Receipt, Misc. Books*, 124, pp. 76, 130, 188, anno 5-6 Henry VII.

⁶ Examples of such receipts and signatures are found in *Exch., Treasury of Receipt, Misc. Books*, 126, 131.

⁷ The triple issue rolls cease with Richard III's reign. When they were resumed in Elizabeth's reign they were at "first merely transcripts from the teller's entry books."

The amount of money actually received at the Exchequer of Receipt in Henry VII's, and in the early part of Henry VIII's reign was very small, except in years when a subsidy was collected, or a loan levied.⁸ Most of the "receipts" of the Exchequer was never brought to London at all, but was assigned by tallies. Warrants for disbursements directed to the Treasurer and Chamberlains were sent either to the Tellers, who paid them in cash, or to the Court of Receipt. A warrant sent thither might call for the payment of £1,000 to the Duke of York for the custody of the East and Middle Marches against Scotland. At the Court of Receipt direction would be given that the Duke of York should be paid the sum by the collectors of customs at London, Pole, Yarmouth, Lynn, Bridgewater, Hull, Exeter and Dartmouth, and Chichester. After the amount to be paid by each collector had been determined upon, for example, £100 by the collector at Hull, much the same performance ensued as though these amounts had actually been paid into the Exchequer. Tallies were cut, written, split and enrolled in the three Receipt Rolls for the amounts; but in the margin opposite the sums the words "*pro duce Ebor. per tall*" with the reason for the assignment were written, instead of the usual *sol.* (paid). The foils of the tallies were preserved in the court, but the stocks were given to the Duke of York. They were in the nature of checks or drafts. The Duke presented them to the various collectors named, who on sight of them paid the sums represented by them to him, instead of the Tellers of the Receipt, and received the tallies as their acquittance. Assignments by tallies were not without their inconveniences. They occasioned long delay, and in some cases could not be collected at all. Every year many "desperate tallies" were returned to the Exchequer for redemption.⁹ In Henry VIII's reign the use of assignments by tallies was reduced, so that by 1541 the

⁸ During the first year of Henry VII, £1,866 19s. 10d. in money was received at the Exchequer of Receipt; in the eighth year £3,860 17s. 3½d. and in the last year £4,717 1s. 7d. *Exch., Treasury of Receipt, Misc. Books*, 125; *Exch., Treasury of Receipt, Declarations of the State of the Treasury*, I.

⁹ The history and method of assignment by tallies are more elaborately described by Hilary Jenkinson, *Archeologia*, LXII, part II, 369-371, "*Exchequer Tallies*."

greater part of the business of the Exchequer was done in cash, with as a consequence, an increase in the prestige of the Tellers, and a lessened importance of the medieval elements of the Exchequer of Receipt.

The examination and audit of the particulars and details of the accounts of revenue collectors was left to the Exchequer of account, or Upper Exchequer. Here a very elaborate system of checks which had grown up in past centuries, examination by Exchequer auditors, formal engrossing, and enrollment in the great parchment rolls of the Lord Treasurer's Remembrancer's office, insured considerable honesty, even though not efficiency and speed.¹⁰ With this formal audit system of the Exchequer of Account, Henry VII never interfered, though he did withdraw from its purview certain important kinds of accounts, leaving there the only customs accounts and the account of the Calais Staple for the wool subsidy, the accounts of the feudal revenue of the sheriffs, bailiffs, escheators, the accounts of collectors of the subsidy, the accounts of certain crown lands, the mint accounts, the account of the Clerk of the Hanaper, and the accounts of the expenditures in the Household and Wardrobe.

The Exchequer of Receipt, where the revenues were actually received and paid, was gradually brought more directly under the royal control. Before Henry VII's reign the Receipt and Issue Rolls, drawn up from the Tellers' entry books and bills were the formal records of the Exchequer of Receipt. In them no classification of receipts and expenditures was made to show the revenue derived from the several sources, or the expenditures for various purposes. In no case was any addition made to show even the total of all revenues or all expenditures. Toward the close of Henry VII's reign however, the Under Treasurer began to draw up each year a Declaration of the State of the Treasury, showing the total revenue received or assigned in the Exchequer

¹⁰ The original particulars and bills of the accountant were carefully examined by the auditors; from them a *Comptus*, written on parchment was drawn up, which when approved was signed at the top by the auditors and Exchequer barons and enrolled on the Pipe Roll, the Foreign Roll, the Customs Roll, the Subsidy Roll or the Wardrobe and Household Roll. When enrolled a line was drawn down the center of the *comptus*, and with the original particulars and bills in a little leathern bag, it was sent to the office of the King's Remembrancer to be preserved.

of Receipt, and the various purposes for which money was expended, with the total expenditure for each.¹¹ These Declarations for the first time made it possible for the king to know exactly the state of his receipts and expenditures in this office, and they symbolized also the king's more perfect supervision over the lower branch of the Exchequer Court.

By the nature of its development, with so many medieval methods part and parcel of its organization, the Exchequer was ill-fitted to be adapted to more modern requirements. Its officials were slow in levying the revenues due to the king; accountants were respiteed from year to year, and payments were deferred "by space of many years." It was moreover, the stronghold of noble privilege and reaction. It had been weakened by royal control over the Exchequer of Receipt, but even more desirable was the creation of new bodies entirely free from the old traditions and influences. Richard III had already recognized its deficiencies and purposed to institute changes in the revenue system and its organization. In the management of the newly acquired estates of the crown the Exchequer of Account, and all its methods were to be superseded, while a new treasury to take its place beside the Exchequer of Receipt was to be instituted. Following and improving upon the plan used for the lands of the Duchy of Lancaster,¹² Richard III proposed clearly to discharge and dismiss the court of the Exchequer from any meddling with any livelihood in taking of accounts, such as the principality of Wales, the Duchies of Cornwall, York and Norfolk, the earldoms of Chester, March, Warwick and Salisbury and all other lands in the king's hands by forfeiture.¹³

¹¹ The first Declaration known is for the year Easter 1505 to Easter 1506. It is found in a Jacobean copy, in *Landsdowne Mss.*, 156, f. 124ff. The Declarations were made regularly by the Under Treasurer until 1551.

¹² In 1399 by a charter of Henry IV all the lands and possessions of the Duchy were declared to be a distinct inheritance separate from the lands and possessions of the crown. The management of the Duchy lands was placed under a separate establishment, the Chancellor and Council of the Duchy of Lancaster, and the distribution of the revenues by a distinct treasury was ordered. Although the Chancellor and Council audited the accounts of ministers and receivers of the lands of the Duchy, the clear revenues were paid into the Exchequer of Receipt, and no new treasury was established.

¹³ The old feudal demesne lands of the crown, the *corpus comitatus*,

These lands were to be placed in charge of receivers to collect their revenues and rents and of "foreign" auditors to take their accounts, for the purpose of increasing their yield to the crown, and strengthening the control of the crown over them. These new auditors and receivers should yearly ride, survey, receive and remember in every behalf that might be most for the king's profit, and thereof yearly to make report of the estate and condition of the same by which the king's grace should know all the lordships that pertained to his crown. These officials were not to be unlettered knights and squires who took great fines and rewards of the king's tenants to their own use, but "learned men in the law," who would be most profitable to be stewards of the said livelihood for many causes concerning the king's profit and weal of his tenants.¹⁴ These officials were not to account before the Exchequer but should make yearly declaration of all such revenues as they had in charge before such persons as the king's grace would assign at London, between Candlemas and Palm-sunday. Exchequer auditors were to make a similar declaration at the same time, so that the king might know every year the total of his revenues, and "what thereof is paid and what is owing."¹⁵

This was equivalent to the establishment of a new system for the land revenue, with an independent revenue court of farmed out by the sheriffs, were so unimportant through the alienations of *terrae datae* that no change in their management was contemplated by Richard III, and none was made in Henry VII's or his successor's reigns.

¹⁴ Foreign auditors and receivers, riding around the country are found as early as the reign of Richard II in the Principality of Wales, and the Duchy of Cornwall, and in the reign of Edward IV in the lands of the Duke of Clarence *Calendar of Patent Rolls, Richard II, V, 24; Ibid., Henry V, I, 139-140; Ibid., Edward IV, Edward V, Richard III, III, 98, 220*. The Exchequer apparently had jurisdiction over such auditors and receivers, and perhaps Exchequer officials ever reexamined accounts passed by the foreign auditors. Richard III once ordered the Exchequer to accept the account of the Receiver-General of Cornwall already examined by the foreign auditor, as final and give a discharge for it. *Exch., King's Remembrancer, Memoranda Rolls, 260 Brevia Directa, Hilary term, membrane 4*.

¹⁵ Richard III's plan, entitled "A Remembraunce made for the more hasty levy of the Kinges revenues" is printed in Gairdner, *Letters and Papers, Richard III and Henry VII, I, 81-85*.

audit and account; but Richard III did not carry out his plans completely. At the beginning of Henry VII's reign the receivers were still rendering their accounts at the Exchequer of Account. But the beginning of the establishment of a new treasury for the receipt of revenue, along side of the Exchequer of Receipt had been made even as early as the reign of Edward IV. For during his reign, the benevolences do not appear on the Receipt Rolls as paid at the Exchequer; while on the other hand, large payments from the king's own coffers suggest that it was to the coffers directly that the benevolences were paid.¹⁶ During the reign of Richard III, the amount of money paid into the Exchequer of Receipt from the crown lands was very small, and the money from the lands was in some cases at least, and may usually have been paid not at the Exchequer, but to the king's own hands, in his chamber.¹⁷

Henry VII carried out the plans of Richard III completely. For the royal lands he erected a new court of audit and account, and to receive his new revenues and some of the old ones, he transformed the King's chamber into a treasury which was of vastly greater importance than the Exchequer of Receipt during the next third of a century. The new court of audit was for a long time very informal, and even on Henry VII's death it was not completely developed. Its beginnings are shrouded in obscurity. There is however, certain circumstantial evidence about its origin. In the first years of Henry VII's reign the great Roll of Foreign Accounts of the Exchequer is quite full. It contains the enrollments of the accounts of the receiver-general of the Warwick and Spencer lands, and of the Duchy of Cornwall, the Chamberlain of Berwick, the Treasurer of Calais, the Mayor and Fellowship of the Staple, the Clerk of the Hanaper and the Treasurer of the Mint. Certain of these accounts disappeared from the Foreign Roll after the eighth year, — those of the Warwick and Spencer lands, of the Duchy of Cornwall, of the Chamberlain of Berwick and of the Treas-

¹⁶ Ramsay, *Lancaster and York*, II, 465, 467, 557.

¹⁷ A note is found in the *Memoranda Rolls* (*Exch.*, *King's Remembrancer*, *Memoranda Rolls*, 260, *Brevia baronibus Directa*, Hilary term, membrane 12) that John Hayes, receiver of the Warwick lands has paid four hundred Marks "to our (Richard III's) own hands in our chamber."

urer of Calais. Moreover, no accounts of the lands newly acquired by Henry VII ever appeared in the Foreign Roll.¹⁸ The evidence of the Foreign Roll in which all land revenue accounts audited at the Exchequer (except those of the ancient *firma comitatus*) would be enrolled, suggests that the lands newly acquired by Henry VII were never in the province of the Exchequer, while some of the most important of the older estates were removed from the Exchequer jurisdiction. The *Repertoires to States and Views of Public Accounts*, an index kept in the Lord Treasurer's Remembrancer's office, of all accountants who came to the Exchequer, shows that during the first eight years of the reign receivers and receivers-general of the king's lands came to the Exchequer in lessening numbers, and practically ceased to account there.¹⁹ The Ministers' Accounts, preserved at the Public Records Office are also of service.²⁰ For the first three years of Henry VII's *compoti* are found for many crown lands, so marked as to show that they were audited and enrolled in the Exchequer.²¹ The *compoti* of John Walsh, one of the receivers general of the Warwick, Spencer and Salisbury lands are signed and marked as audited and enrolled in the Exchequer for the first five years of the reign, to Michaelmas

¹⁸ *Exch., Lord Treasurer's Remembrancer, Foreign Roll*, 119. The accounts of receivers of certain very small parcels of land continued to be "enrolled in" the Foreign Roll for a long time after this.

¹⁹ *Repertoires to States and Views, Public Record Office Indexes*, 7025.

²⁰ Though there are several thousand Minister's Accounts in the time of Henry VII, very few are of value for this problem. As the royal land system was organized the individual manors were in charge of bailiffs and ministers who paid the money they collected from the tenants to a receiver who was in charge of a large district. If the particular estate was very large, there might be four or five receivers, who paid the revenues to a receiver-general. Many of the Ministers' Accounts are the accounts of bailiffs and receivers, from which the Receiver-General made up his account, and he submitted these with his account in London, as the original particulars and bills. These original particulars are of no value in determining where the account was audited, since no distinguishing mark of any kind was ever placed on them. Only the final account of the Receiver-General, the *compotus*, is of service.

²¹ They are signed at the top by the Barons and auditors of the Exchequer and have a line drawn down through the center. Enrolments of all are found in the Foreign Roll. *Ministers' Accounts, Henry VII*, 1101, 1102, 1239, 1240, 1356, 1472.

1490. *Compoti* of this same account for the seventh and a later year are neither signed or marked as enrolled in the Exchequer. In the Foreign Roll, the last enrollment of Walsh's account was in the eighth year of the reign, for the revenues of the sixth year. The *Compoti* of John Hayes, the other receiver general of the Warwick, Spencer and Salisbury lands are marked as audited and enrolled in the Exchequer to the end of the sixth year. The last entry in the Foreign Roll of Hayes's accounts is for the sixth year. The only *Compoti* which are signed by the Barons and auditors of the Exchequer, and marked as enrolled later than the sixth year are the *Compoti* of the Constable of Windsor Castle from the ninth to the seventeenth years of Henry VII, and these duly appear on the foreign roll.²² Many *Compoti* later than the sixth year are preserved which are not marked with any Exchequer mark. More than that, certain of them differ in form and phrasing from the old *Compositus* and the money for which they account is noted as paid to John Heron, or to the Kings Chamber.²³ It may be that at the end of the eighth year of the reign, that is after Michaelmas 1493, when the accounts of the sixth year were rendered, changes in the organization of the revenue system were made. Lands were taken out of the jurisdiction of the Exchequer, and their accounts no longer received there. Yet the accounts were drawn up and audited regularly without break. The new auditing body was the beginning of the new revenue court of audit.

Butlerage and Prisage were also withdrawn from Exchequer jurisdiction later in the reign. In this case there is preserved

²² John Walsh's accounts are found in *Ministers' Accounts, Henry VII*, 1570-1374. John Hayes's accounts, *ibid.*, 1356-1361. The accounts of the Constable of Windsor, *ibid.*, 20.

²³ The *Compoti* of Sir William Stanley's lands in Chester for the eleventh and eighteenth years of the reign are examples. The membranes of the accounts of the bailiffs are attached to the membrane on which the *Compositus* is written and the payment of money is noted, "Et in denariis liberatis ad Receptam coffuri domini Regis tam de arragais quam de parte Recepte sue supradicta ad manum Johannis Heron ad duas vias, una vice per billam suam apud Westmonasterium X. die Novembris . . . sub signeto et signo manuali dieti Johannis Heron suprt compotum liberatis et penes praedictum Receptorem remanentes." *Ministers' Accounts, Henry VII*, 1562, 1564. Other examples are found *ibid.*, 133, 134, 1047, 1373, 1374, 1391-1393.

an original indenture telling something of the new court and the names of its chief officials. "This indenture, twentieth February, anno XX. (1505) between Roger Bishop of Carlisle and Robert Southwell knight, on the one part, and William Hodre knight, Chief Baron of the King's Exchequer, Bartholomew Westby, William Bollyngay and John Allen, Barons of the Exchequer on the other part, witnesseth the names of such of the King's officers and accountants as have appeared and entered their account before the said Roger Bishop of Carlisle and the said Robert Southwell, having the King's authority to call them in that behalf. Against all which persons underwritten so being in account before the said Bishop and Robert Southwell, the said Bishop and Robert desire Remanentes processes hanging in the said Exchequer for causes underwritten to be put in suspense according to the King's letter in this behalf directed."²⁴ The Bishop of Carlisle and Robert Southwell are named again in the accounts of the receiver-general of the Duchy of Cornwall for the nineteenth year, where an item in the account is noted as respited "per mandate Rogeri Carl. episcopi et Robert Southwell consiliari domini Regis."²⁵ Finally, for the nineteenth, twentieth and twenty-first years of the reign there are the general declarations of the accounts of this new court, made to the king by Robert Southwell. These show that by that time the court, still dependent for its existence merely upon the king's authority, was highly organized, and took the accounts of practically all the crown lands, (except the Duchy of Lancaster), of wards' lands in the king's hands, and of Butlerage and Prisage.²⁶

²⁴ *Accounts, Exch., Queen's Remembrancer*, 517/10.

²⁵ *Minister's Accounts, Henry VII*, 1084.

²⁶ *Exch., Treasury of Receipt, Misc. Books*, 213, 212. The preamble of the Declaration for the twenty-first year runs — "Liber declarationum de anno Regis Henry VII. XXI.mo tam de terris domini regis quam de terris wardorum domino regi accommodatis, de Butts et Prisage vinorum per Robertum Southwell." The account of each separate estate is set forth on a page by itself, and the gross revenue, the costs of repairs and of management, the money paid to Heron and the unpaid arrears are shown. Other account books of the court, dealing with the wards' lands alone are also found, *Exch., Treasury of Receipt, Misc. Books*, 247, 248. Each page of all these books is signed by the king himself with his sign-manual.

The new court early known as the Court of General Surveyors, was a court of audit like the Exchequer of Account. A treasury, like the Treasury of Receipt, was a necessary adjunct. This place was filled by the Treasurer of the Chamber, who already in Richard III's reign, and possibly in the reign of Edward IV, had received certain of the royal revenues. In as much as he was in personal attendance upon the King, treasure in his hands would be more directly under the control and at the disposal of the King than in the Exchequer of Receipt. Sir Thomas Lovell was appointed Treasurer of the Chamber in the first year of Henry VII's reign, and as late as 1506 he held the office. The actual work, however, certainly from 1487 on, was done by his deputy, John Heron, who himself became Treasurer of the Chamber before the end of the reign. To him were paid the new revenues of all kinds from lands, the proceeds of the benevolence and the forced loans, the French pensions, the surplus of Calais and Berwick, some customs revenues and the later clerical and lay subsidies, and all the money received by recognizance and by obligation. Some of these items were paid to him by assignment of tallies from the Exchequer, and represent the unexpended surplus of the Exchequer, paid to him by royal warrant. The accounts of such were rendered in the Exchequer of Account. But the more important of the items enumerated came to him as the regular treasurer of the newly established court of audit. He was further appointed treasurer of the revenues of the Duchy of Lancaster, such as were in excess of those appropriated by Parliament for the purpose of the Household. The relations between the Treasurer of the Chamber and the King were particularly personal and intimate. Until much later in Henry VII's reign, it was unnecessary for the Treasurer of the Chamber to draw up any formal declaration of his accounts, as was done by the Exchequer of Receipt, the new land court of audit, and the Duchy of Lancaster, since his account books of the receipts and issues of his office were examined every day by the King himself. Nearly every page of his books bears the royal sign manual, with notes in the King's own hand.²⁷

²⁷ With the development of the Treasury of the Chamber under Henry VII compare the analogous developments of the Wardrobe and Chamber

The new court of audit and the enhanced position of the Treasurer of the Chamber, were displeasing to the Exchequer and its officials. Even while Henry VII was still king, the Exchequer officials instituted processes against accountants who had ceased to present their accounts in the Exchequer, and Henry VII found it necessary to instruct his attorney-general to take these processes into his own hands and command the Exchequer officers to "surcease of any further process making, touching this matter, until they shall know therein our further pleasure."²⁸ But directly that Henry VII had died, the Exchequer began to vex and trouble such receivers and receivers-general who paid their money to John Heron and accounted before the General Surveyors. The Exchequer refused to accept the bills and books signed by the King or by Heron, and compelled the accountants to come personally and appear in the Exchequer, render accounts anew, and make a second payment, into the Exchequer of Receipt "as if they had never accounted nor made payment, to their importable loss, trouble, hurt and damage against all right reason and good conscience." Since Henry VIII and his advisers had no intention of returning to the slow, cumbersome Exchequer system, an act was passed in Henry VIII's first Parliament commanding the Exchequer officials to honor all bills and acquittances signed by Heron.²⁹ Shortly afterward, on February 6, 1511, the King, intending to continue the same order of account before his General Surveyors, and "to be answered of his revenues in his Chamber," issued a special commission to Sir Robert Southwell (who had been one of the General Surveyors under Henry VII), and Bartholomew Westby, who took the place of the deceased Bishop of Carlisle, to survey and approve the royal lands, and to continue the new court of audit for land revenue originated under Henry VII.³⁰

The first thought of Henry VIII's government seems to have been to make the General Surveyors a department of the Exchequer in the 13th and 14th centuries, studied by Professor T. F. Tont, in his brilliant *Chapters in the Administrative History of Medieval England*.

²⁸ *Accounts, Exch., Queen's Remembrancer*, 302/14.

²⁹ *Statutes*, 1 Henry VIII, c. 3. This act was to continue to the next Parliament.

³⁰ *Statutes*, 3 Henry VIII, c. 23, page 45. The commission, incorporated into this statute of the following year, is recited here in full.

chequer. For in addition to the commission of February 6, 1511, there were issued two Privy Seals, dated June 30, 1510, and October 31, 1511, according to which accountants could be summoned only by the Exchequer, and process made out against them for failure to account only in the Exchequer. Moreover, Southwell and Westby were not empowered to administer oaths. All accountants had to be sworn before the Exchequer Barons before being sent to Southwell and Westby. But because no summons could be issued from the Exchequer in vacation times, which were notoriously long, many delays ensued to the great loss of the King, and of accountants who came to London during vacation periods. To remedy these defects and "for a further and stronger authority" to be given to Southwell and Westby than could be given to the royal commission and the Privy seals, Parliament at its second session, in 1511-1512 passed an act appointing the General Surveyors and Approvers of all and singular of the King's lands and estates, with supervision, but not direct control over the Duchy of Lancaster. They were given full power to summon accountants and to give the acquittance upon bills signed by Henry VII, Henry VIII or John Heron. By the same act Heron was confirmed in the office of the Treasurer of the Chamber to receive the land revenues, and to be responsible only to the King.³¹ This act was valid only for one year; it was renewed in 1512 and in 1514, and repealed and reenacted in more systematic

³¹ *Statutes*, 3 Henry VIII, c. 23. The act further provided that the accounts approved by the General Surveyors should be engrossed on parchment, and sent, with all original account books and tallies to the Exchequer, to be preserved by the Clerk of the Pipe. Provisions similar to this are found in the later acts relating to the General Surveyors. The reason for this seems to be connected with the assignments or appropriations made by Parliament for the Household and Wardrobe. These assignments, which were under Exchequer supervision, were made in large part upon the land revenues. Tallies were issued to the cofferer of the Household and to the Clerk of the Wardrobe by the Exchequer, directed to the receivers of the land revenues for payment. Since the Cofferer and Clerk of the Wardrobe rendered their accounts of receipts and expenditures in the Exchequer, it was necessary that the Exchequer should know what they had received upon the tallies issued to them. This could be done accurately only if the accounts of the receivers of the land revenues were sent to the Exchequer to be checked with their accounts. In practice

form in 1515. The act of 1515 was renewed in 1522 and made "perpetual" in 1535.³²

But all the revenues of King Henry VII were not received and expended under the jurisdiction of the General Surveyors, the Treasurer of the Chamber and the officials of the Exchequer. In the two most outlying parts of the kingdom, large sums were collected and spent by local officers for the charges of the garrisons and the administration of the King's government at Berwick and Calais. In 1487 £2068 6s. 8d. of the revenues of certain lands in the north of England and of the customs of Newcastle were set aside to be collected, administered and spent by the Chamberlain of Berwick for the wages of the garrison there. Later the assignment was increased to £2627 14s. 4d. on the crown lands, and on the customs of Newcastle and Hull.³³ During the two years from Michaelmas 1487 to Michaelmas 1489, the Chamberlain of Berwick received £4752 0s. 9d., and spent £4338 17s. 4d., and during the next two years he received £4822 8s. 13d., and spent £4343 13s. 1d.³⁴

At Calais the customs subsidy on wool brought from England by the merchants of the Staple was collected by officers of the Staple. This arrangement had originated under Edward IV. He was in debt to the Society of the Staple, and at the same time the garrison of the town of Calais was disorderly, and threatened the property of the Staple, because their wages were not paid promptly by the King. In order to protect themselves against the garrison by securing prompt payment of their wages, and to recover the money which the King owed them, the Mayor and Fellowship of the Staple arranged to take over the collection of the wool subsidy at Calais, pay the garrison, make certain payments to the King's judges, sergeants at law, and his attorney, and to the customers and controllers of the the auditors of the court of General Surveyors drew up two "Vewes" of of the accounts of receivers. Of these one was sent to the Exchequer, and one was preserved by the General Surveyors (*Augmentations Office, Misc. Books*, 313A 314, 318, 322).

³² *Statutes*, 4 Henry VIII, c. 18; 6 Henry VIII, c. 24; 7 Henry VIII, c. 7; 14-15 Henry VIII, c. 15; 27 Henry VIII, c. 62.

³³ *Rot. Parl.*, VI, 394a, 496a.

³⁴ *Lord Treasurer's Remembrancer, Foreign Roll*, 119, anno 5, membrane E; anno 7, membrane C.

wool subsidy of the port of London, to provide for the convoy of wools from England to Calais, to keep part of the revenues each year to pay the King's debt to themselves, and to pay the balance to the royal treasury. This arrangement was continued under Henry VII, and during part of Henry VIII's reign.³⁵ For the charges of the garrison, it was originally provided that £10,022 4s. 8d. should be paid to the Treasurer of Calais by the Staple each year. This sum was regularly paid until 1502, after which it was reduced to amounts which varied between £5,011 and £7,753 for the remaining years of the reign. To the king's attorney, sergeants at law and judges, and to the London customs-house officers £675 4s. 4d. were paid each year, and £316 13s. 4d. were paid annually for convoy. The account for the whole sum collected for the customs by the Staple was rendered at the Exchequer, and the surplus or balance, which averaged £4,000 a year after the reduction, in 1502, of the amount paid for the garrison, was entered among the Exchequer receipts, and was paid by assignment from the Exchequer to the Treasurer of the Chamber.

The costs of governing and holding Calais were not, however, entirely defrayed by the money paid to the Treasurer of the town by the Staple from the proceeds of the wool subsidy. In addition to this he received rents from certain lands in the English pale there, certain octroi dues and the profits made on the victuals sold to the soldiers of the garrison by the government. These items amounted to between £2,500 and £3,000 a year. The expenditures of the Treasurer of Calais were always well within his receipts, so that he had an unexpended balance of from £500 to £6,000 a year, which, like the surplus of the Chamberlain of Berwick was turned over, except in the early years of the reign, directly to the Treasurer of the Chamber.³⁶

With the details of the accounts of such revenues as the

³⁵ *Rot. Parl.*, VI, 55b, 268, 395a, 523b.

³⁶ The balance for the year August 22, 1493, to August 22, 1494, was £524; for the year August 22, 1506, to August 22, 1507, £6382. The accounts of the Treasurer of Calais are found in *Accounts, Exch., Queen's Remembrancer*, bundles 200, 201, 202; and in *Duchy of Lancaster, Accounts Various*, bundle 2. The accounts of the Mayor and Fellowship of the Staple of Calais are enrolled in the *Foreign Roll*, 119, and some originals are preserved in *Accounts, Exch., Queen's Remembrancer*, bundle 201.

customs and customs subsidies, and the old formal revenues collected by the sheriffs, and the expenditures of the Household and Wardrobe, which were audited by the Exchequer of Account, Henry VII did not concern himself. But the state of his revenues in the Exchequer of Receipt, the Treasury of the Chamber, the Court of General Surveyors and the Duchy of Lancaster he knew intimately from his personal examination of their account books, and from the Declarations which were submitted to him each year as supreme financial minister.³⁷ Under his personal view were brought also the accounts of the Chamberlain of Berwick, and of the Treasurer of Calais.³⁸ In connection with the accounts of these two officials, who accounted to the king personally in detail for certain revenues and expenditures, a new form and method of accounting developed, applied later especially to the accounts of expenditures. Here is the origin of the Declared Account, long most important in English government finance. The first Declared Account is the *Status sive Declaratio Compoti* of the Treasurer of Calais for the year 1493-1494. The Exchequer *Compotus* was written on parchment, the new declaration of account was written on paper; the *Compotus* was a summary of the account prepared by an Exchequer auditor from a schedule drawn up by the accountant himself, the new declaration was made up by new officials, the King's auditors, from the accountant's original books; the *Compotus* was presented to the Barons of the Exchequer to secure a *quietus* or discharge for the accountant, while the declaration was "declared" before the king, either in person or dele-

³⁷ In addition to the Declaration of the State of the Treasury made by the Exchequer of Receipt, the Declarations of the General Surveyors, and the account books of the Treasurer of the Chamber, there were Declarations of the Duchy of Lancaster. These begin in the year 1505-1506, the same year in which the first preserved Exchequer Declaration was made (*Duchy of Lancaster, Accounts Various*, 23/14, 15, 16, 17). Like so many other account books, those of the Receiver-General of the Duchy, on which the Declarations of the Duchy were based, were personally examined and signed by the King (*Duchy of Lancaster, Accounts Various*, 6/1).

³⁸ The Chamberlain of Berwick ceased to account in the Exchequer after 1491; the Treasurer of Calais after 1492, when the last entry in the Foreign Roll, and the last *Compotus* of his accounts in the Exchequer are found.

gate in order that the accountant might have his acquittance.³⁸

By the new institutions and methods which were developed in the course of his reign, Henry VII completely broke away from the medieval financial system, and laid the foundations for the more modern English revenue system, which was to be more completely perfected by his immediate successors, who merely elaborated on his ideas.

³⁸ For the reign of Henry VII the evidence for the declarations of account, or declared accounts as they became known at a later period, is rather scanty, since most of the preserved declarations and original account books of the reign are without distinguishing marks. In one case, however, the account books of Hugh Conway, Treasurer of Calais, for the year 1506-1507, are endorsed as delivered to John Clerk and Robert Cliff, the "King's auditors." Neither Clerk nor Cliff were Exchequer auditors. The declaration made from these books is signed "examinata per me, Robertum Cliff." See *Accounts, Exch., Queen's Remembrancer*, 202/6, 7, 13, 14. Some of the preserved declarations are annotated in a hand which may be the King's, and one of them has the following note,— "le cu dno Reg, le cu J. Heron" (lecta cum domino Rege, lecta cum J. Heron). *Accounts, Exch., Queen's Remembrancer*, 201/20. The method of accounting indicated by these scraps of material is exactly the same as the one which was used all through Henry VIII's reign for these new accounts. The declaration of account became the normal way of accounting for all special funds and expenditures. The particulars were examined and the formal declaration drawn up in three copies by special auditors, the king's auditors or auditors of the prebends and foreign accounts. At first without much organization, in 1560 they were constituted the audit office and annexed to the exchequer. The Declaration drawn up by the auditors was presented to the king in person or in commission for approval and acceptance. A signed and sealed copy was given to the accountant as his acquittance, and the two other copies were preserved by the auditors. The later distinction between Pipe office and Audit office copies was not made.

CHAPTER VII

THE VALUE OF HENRY VII'S REVENUES

The construction of the new financial system, with the increase of the revenues and the reorganization of the treasury department was a work which occupied practically the whole of Henry VII's reign. His first Parliament began the great resumptions and confiscations; the work of Empson and Dudley was still proceeding at his death. But as early as 1490 there were indications in the cessation of short-time loans by the government, that the crown income was meeting normal expenditures, while a balance of over £5,000 in the hands of the Treasurer of the Chamber on September 30, 1489,¹ as the surplus of his receipts over his disbursements for the last two years suggests an even greater improvement. For this there is ample evidence after the end of the French war in 1492. Income began to exceed necessary expenditure to such an extent that the king was able to spend large sums on plate and jewels, and new buildings and palaces.² He was even beginning to create a surplus, as is evidenced by his ability to send £14,000 to Ireland for wages of soldiers between December 1494 and October 1496, apparently without difficulty.

But it was only after the time of the Scotch war in 1496 that

¹ The exact sum was £5,739 17s. 2d. *Accounts, Exch., Queen's Remembrancer*, 413/2, I.

² In 1492 he spent £5,325 on jewels, of which £4,875 went for cloth of gold, jewels and pearls for a "harness" in preparation for his voyage to Calais; in 1493 he spent £1,813 and in 1495, £4,853 for jewels and plate. In 1494 he began building at Woodstock and at Shene. Between January 22, 1494 and Michaelmas 1496 he had spent £5,329 19s. 2d. at Shene and Woodstock and £666 13s. 4d. at St. George's Chapel and Windsor Castle. *Add. Mss.*, 7099, Craven Ord's transcript of the payments of the Treasurer of the Chamber. The original books for the years 1492 to 1495 are missing.

any very considerable surplus treasure seems to have been accumulated. The king was unable, for instance, to meet the large initial expenditures of both the French and Scotch wars; and was compelled to borrow large sums from his subjects for the purpose.³ Moreover, not once before 1497 is any mention made in any ambassador's report of Henry VII's wealth. Such notices are found, however, after the successful ending of the Scotch war in 1497. In September, 1497, Raimondo de Soncino, the Milanese ambassador in London wrote that the kingdom was perfectly stable on account of the king's wisdom and "secondly on account of the king's wealth, for I am informed that he has upwards of six millions of gold and it is said that he puts by annually five hundred thousand ducats."⁴ In the following month, he again referred to Henry VII's wealth as one of the things which made him secure against fortune.⁵ In reading Soncino's rather exuberant figures, however, the prothonotary de Ayala's comment should be borne in mind, "that the King of England is less rich than is generally said. He likes to be thought rich, because such a belief is advantageous to him in many respects."⁶ But a year later, even de Ayala was enthusiastic about Henry VII's wealth. "His riches augment every day. I think he has no equal in this respect."⁷ The evidence of the ambassadors regarding Henry VII's increasing wealth

³ To meet the costs of an expedition to France perhaps £13,907 was borrowed and repaid. An example of the letter requesting the loan will be found in the *Reports of the Historical Mss., Commission, Report XII, App. 4, Papers of the Duke of Rutland*, p. 13. Records of repayment are found in the Treasurer of the Chamber's accounts, *Add. Mss.*, 7099. In 1496 privy seals for loans to the amount of £40,000 were issued from the chancery. Many of these cancelled privy seals, which were both a request for the loan and a receipt for repayment are preserved in the Public Record Office, *Exchequer, Treasury of Receipt, Privy Seals for Loans*, Bundles 2, 3. Calendared and printed examples are found in the *Reports of the Historical Mss., Commission, Various Collections*, I, p. 224, no. 109; *ibid.*, *Report III, App.*, p. 420; R. I. Woodhouse, *Life of John Morton*, Appendix.

⁴ *Venetian Calendar*, I, 751.

⁵ *Milanese Calendar*, I, 548.

⁶ *Spanish Calendar*, I, 210, a letter of de Ayala, July 25, 1498.

⁷ *Spanish Calendar*, I, 239. Other notices of Henry VII's wealth are found in *Milanese Calendar*, I, 618, May, 1499; *Spanish Calendar*, I, 204, July, 1498; *ibid.*, 511, April, 1507; *Venetian Calendar*, I, 942, May, 1509.

is borne out and their guesses regarding his accumulated treasure are corrected by a study of the absolute figures of the revenues themselves.

The total receipts of the Exchequer, apart from the extraordinary subsidies, benevolences and loans varied between £32,000 a year at the beginning of the reign, and £48,000 a year at the end of the reign. In the year Michaelmas 1505 to Michaelmas 1506, an average year at the close of the reign, the Exchequer receipts were made up:⁸ . . .

Customs dues and subsidies of wool, wool-fels and leather	£27,597
Land revenues and fee farms	6,918
Sheriffs' profers, and issues and remains of accounts of sheriffs, bailiffs and escheators	6,009
Hanaper of Chancery, fees for affixing the great and privy seals	1,511 ⁹
Fines in the king's courts and forfeited bonds	988
Goods and merchandise confiscated in the ports for breach of customs regulations	893
Unexpended balance, returned from the Wardrobe assignment or appropriation	514
Arrears of subsidies	344
Farm of the ulnage	323
Profits of the mint	142 ¹⁰
Vacation of Abbeys	120
Fines for license of concord	63
Miscellaneous	114

The disbursements of the Exchequer were distributed over a variety of items. About one-fourth of the Exchequer revenue was assigned or appropriated by act of Parliament for the expenses of the royal household. The other payments met the expenses of the royal wardrobe; the fees and annuities of the great officials of state; the wages of the yeomen of the guard,

⁸ *Landsdowne, Mss.*, 156, f. 124, the Under-Treasurer's declaration of the State of the Treasury, 1505-1506.

⁹ The profits of the Hanaper fluctuated greatly. They were as high as £1,564 in the first year of the reign and as low as £284 in the tenth year (*Accounts, Exchequer, Queen's Remembrancer*, 217/4; 218/2, 6, 7; 219/1; *Accounts, Exchequer, Lord Treasurer's Remembrancer, Foreign Roll*, 119).

¹⁰ The profits from the mint were small, never more than £200 a year during the reign. The mint accounts are found in *Exchequer, Lord Treasurer's Remembrancer, Foreign Roll*, 119, and *Accounts, Exchequer, Queen's Remembrancer*, bundle 295.

yeomen of the crown, heralds and sergeants-at-arms; the rewards to the sheriffs and collectors of customs and other charges, in a word, the general expenses of the administration of the government. The unexpended balance, about one-third of the Exchequer revenue in the last years of the reign, was paid over to the Treasurer of the Chamber. During the year Michaelmas 1505 to Michaelmas 1506 the Exchequer disbursements were:¹¹

Expenses of Household	£13,059
Expenses of Wardrobe	1,395
Annuities and fees of divers lords, knights and others, officials of the state	1,354
Wages of the yeomen of the guard	1,200
Wages of heralds and pursuivants	66
Obligations to ecclesiastical persons	86
Wages of the yeomen of the crown	131
Wages of the sergeants at arms	142
Wages of the surveyor of the Ordnance and his clerks	88
Rewards to sheriffs	1,555
Rewards to collectors of customs	2,762
Other rewards	740
Payment of messengers	1
Payments for special causes, by the king's warrant	693
Wages for the Master of Works and the expenses of his office	333
Restitution of desperate tallies	263
Fees of the officers of the Exchequer of Account	753
Fees of the officers of the Exchequer of Receipt	480
Fee of the Keeper of the Privy Seal	365
The Duke of York, for keeping the East and Middle Marches against Scotland	1,000
Wages and allowances of ambassadors	2,000
Paid by assignment of tallies to the Treasurer of the Chamber	15,438

Since the greater part of the new or increased revenues were paid, not at the Exchequer, but to the Treasurer of the Chamber, the increase in the business of his office is much greater than that of the Exchequer. While the Exchequer revenues increased by fifty per cent during the reign, his augmented perhaps ten fold between 1487 and 1505.

His total receipts were:¹²

July 4 1487 to September 1 1487 £ 10,491

¹¹ *Landsdowne Mss.*, 156, f. 124.

¹² *Accounts, Exchequer, Queen's Remembrancer*, 413/2, I, II, III; 414/6; *Add. Mss.*, 21480, account books of the Treasurer of the Chamber.

September 1	1487	to	September 26	1488	10,811
September 26	1488	to	Michaelmas	1498	15,288
Michaelmas	1489	to	Michaelmas	1490	12,942
Michaelmas	1490	to	Michaelmas	1491	8,164
Michaelmas	1491	to	August 25	1492	14,693
August 25	1492	to	October 10	1493	14,716
October 10	1493	to	Michaelmas	1494	31,270 ¹³
Michaelmas	1494	to	Michaelmas	1495	38,320
Michaelmas	1495	to	Michaelmas	1497	107,973
Michaelmas	1502	to	Michaelmas	1503	96,498
Michaelmas	1503	to	Michaelmas	1504	86,973
Michaelmas	1504	to	Michaelmas	1505	131,141

Many of the individual items which made up the receipts of the Treasurer of the Chamber and contributed to the total increase, by their greater productivity, have already been studied. An analysis of the receipts of the Treasurer of the Chamber for a single year will bring out still more clearly the relative importance of each of these. Further, certain reduplications, where the revenues are entered among both the Exchequer receipts and the receipts of the Treasurer of the Chamber can be checked, so that an accurate total can be arrived at. The receipts of the year Michaelmas 1504 to Michaelmas 1505 were as follows:¹⁴

I. Landed Revenues, Revenues of crown estates and ward's lands in the king's hands	£32,630
Vacation of bishoprics and abbeys, for the restitution of temporalities and licenses of free election	5,339
Sale of wardships	765
Woodsale from the king's lands	115
Fines for livery of lands	268
Licenses for mortization of land	100
Assignment on the Duchy of Lancaster for the Prince of Wales' household	666
II. Clerical and Lay Subsidies, Arrears of Subsidies	305

¹³ In this year, 40,938 crowns from the first three payments of the French pension were received by the Treasurer of the Chamber. French crowns were received in many of the following years by the Treasurer, but were not entered into his account because they formed "no perfect sum."

¹⁴ *Add. Mss.* No. 21480.

Clerical subsidy granted in Yorkshire 677

The aid granted by Parliament in 1504 25,311

III. Certain payments for ambassadors, the king's works, and the keeping of the Scottish marches are noted among the Exchequer disbursements. In practice the Treasurer of the Chamber advanced the money for these purposes to the men entitled to receive it, and the under-Treasurer of the Exchequer made repayment to him, instead of paying directly. In this way the Treasurer of the Chamber received £3,353

The Treasurer of the Chamber also advanced ready money to the Cofferer of the Household, averaging about £1,000 per month. This, being repaid, was accounted as "receipts." For the year there was thus repaid, and included in the income of the year £12,728

IV. The payments from the Exchequer 13,273¹⁵

V. Payments by obligations and recognizances for causes not stated 21,565

VI. Miscellaneous receipts, fines for hunting, riots, negligence in office 1,514

Fines "for not being made knights of the Bath" 1,125

"Marriage money" from the king of Spain 1,000

Repayment to the king of money borrowed from him 900

Payment of debts owing to the king 862

Surplus of Berwick 685

Surplus of the Treasurer of Calais and arrears of revenue administered by him 622

¹⁵ The treasurer of the chamber made no note of these large payments of the Exchequer balance to him as coming from the Exchequer. They were all made by assignment of tallies; that is the Exchequer issued the tallies to the Treasurer of the Chamber, and he collected the money from the accountants. With the aid of the Exchequer account books, it is found that they comprised and are noted in the books of the Treasurer of the Chamber as:-

The surplus of the Staple at Calais from the wool subsidy collected by them, after the garrison and other charges had been paid £4,757

Custom dues, chiefly from Southampton, Exeter and Dartmouth 6,716

The profits of the Hanaper of Chancery 1,211

The profits of the mint 153

The profits of the sale of victuals to the garrison at Calais 270

The farm of the exchange 166

Licenses for the export of tin and wheat and the import of wine	597
Sale of offices	125
Pardon, and confirmation of liberties to corporations	66
Other miscellaneous receipts	2,234

The disbursements of the Treasurer of the Chamber were most varied, consisting chiefly of such payments as more intimately concerned the king and his court, rather than the civil administration, as did the Exchequer payments. The Treasurer of the Chamber paid the wages of servants attached to the court itself, notably the yeomen of the chamber, the musicians and minstrels. He purchased rich cloths and stuffs, perhaps for purposes outside the domain of the wardrobe; he rewarded ambassadors, paid out the king's weekly alms and offerings in church and provided the exhibitions or scholarships of the king's scholars at Oxford. Payments for these items constituted the regular charges of the Treasurer of the Chamber, and at times when no great payments by the king's special command were made, these charges varied from £9 5s. 9d. to £280 3s. 0d. a week. For the sixth year of the reign the king's ordinary charges of this sort, including the payment of "Espies" were only £4,029 6s. 79.; but this increased as the reign went on.¹⁶

But the ordinary charges formed but a very small part of the total disbursements of the Treasurer of the Chamber, as will be apparent from a table showing these totals:¹⁷

Michaelmas	1495	to	Michaelmas	1496	£25,707
"	1496	to	"	1497	73,366 ¹⁸
"	1497	to	"	1498	42,302
"	1498	to	"	1499	32,836
"	1499	to	"	1500	46,183
"	1500	to	"	1501	52,934
"	1501	to	"	1502	81,252

¹⁶ As an example of the rate of increase of these ordinary charges, the wages of servants and musicians of the court can be taken. In the sixth year, just instanced, these wages were £1,296; but in the years after 1505, they had been increased to £1,884 a year.

¹⁷ *Accounts, Exchequer, Queen's Remembrancer*, 414/6; 414/16; *Add. Mss.*, No. 21480.

¹⁸ This is the year of the Scotch war, and the amount includes the war expenditures.

"	1502	to	"	1503	90,327
"	1503	to	"	1504	79,408
"	1504	to	"	1505	169,003 ¹⁹
"	1505	to	"	1506	124,358
"	1506	to	"	1507	66,046
"	1507	to	"	1508	54,657
"	1508	to	"	1509	132,643

A part of these great sums represents money paid for the wages of soldiers in Ireland and against Scotland; for the upkeep of the navy and the erection of new palaces and buildings for the king's use. The remainder may be considered as invested in jewels and in loans. Henry VII purchased jewels and plate on a very lavish scale, in all probability as a form of saving, just as Indian princes of the present day do. Between December 24, 1491 and the end of the reign, at least £128,441 was spent for jewels; while the crowns received in payment of the French pension were sometimes at least used for a similar purpose.²⁰ Much money was also invested in loans. The Archduke Philip and his son Charles borrowed a total of at least £260,000.²¹ A very great deal was lent to English merchants and to Italian merchants in England. Such loans were unimportant and small before 1505, not above £3,400 a year; but from Michaelmas 1505 to Michaelmas 1509 £87,600 were loaned in this way.²² The loan was generally secured by English noblemen, and the bond provided that if the loan were not repaid promptly on two months' notice, a penalty should be paid. Though no interest was exacted, it was often provided that the loan which had been made in silver should be repaid in gold. But more generally the borrower bound himself to import into England enough goods to pay a certain amount in customs dues, each year as long as the loan stood.²³

¹⁹ In this year £138,000 were loaned to the "Prince of Spain."

²⁰ On one occasion the gold crowns were turned over to the king's goldsmith to be made into a gold chain; and on another they were "sent to Paris in France to buy plate for the king's household." (*Add. Mss.*, No. 21480 f. 180; *Accounts, Exchequer, Queen's Remembrancer*, 414/6, March 1497).

²¹ *Add. Mss.*, 21480; *Exchequer, Treasury of Receipt, Miscellaneous Books*, 214.

²² *Accounts, Exchequer, Queen's Remembrancer*, 415/3, 414/16; *Exchequer, Treasury of Receipt, Miscellaneous Books*, 214.

²³ This practice was followed by Henry VIII in the early years of his reign, on an even larger scale.

In addition to the revenues received and expended by the Exchequer and the Treasurer of the Chamber, there were certain not unimportant sums collected and expended locally, in the most outlying parts of the kingdom, by the Chamberlain of Berwick and the Treasurer of Calais for the charges of the government and garrisons there. At Berwick these sums averaged something over £2,000 a year, collected from land rents and the customs dues of Newcastle and Hull. At Calais, the Treasurer of Calais received from the Society of the Staple for the wool subsidy and from the rents of certain lands in the town, the octroi dues and the profits made on the victuals sold to the garrison, an average of £13,200 a year. His expenditures were always well within his receipts, by sums ranging from £524 in 1492 to £6,382 in 1507.²⁴ The unexpended balance was turned over to the Treasurer of the Chamber and has already been included in the receipts of his office, but account must be taken of the sums expended at Berwick and Calais in totals of income and disbursements of the government.

During the first few years of the reign the total receipts of the crown from all regularly recurring sources, received at the Exchequer, Berwick and Calais were about £52,000 a year, and the expenditures were so much greater that it was necessary to resort to subsidies and loans. During the last five years of the reign, the receipts averaged £142,000 a year, received at the Exchequer, the Treasury of the Chamber, Berwick and Calais, all duplications eliminated. The entire expenditures, including the heavy investments in loans and jewels averaged £138,000 a year.

At Henry VII's death it was believed that as a result of his financial measures £1,800,000 in gold and silver was found in his coffers.²⁵ Falier, the Venetian ambassador reporting to the Venetian senate in 1531 spoke of the treasure of Henry VII

²⁴ The accounts of the Chamberlain of Berwick and of the Treasurer of Calais are enrolled in the *Foreign Roll* (*Exch., Lord Treasurer's Remembrancer, Foreign Roll*, 119) and are found in the original in accounts, *Exch., Queen's Remembrancer*, bibles 200, 201, 202 and in *Duchy of Lancaster, Accounts Various*, bundle 2.

²⁵ Bacon, *Henry VII*, 210. Bacon, it is to be noted gives the statement cautiously, on the authority of "tradition."

as six millions of gold, that is, about £1,300,000.²⁶ Sanuto, commenting on Henry VII's death wrote in his diary that "he had accumulated so much gold that he is supposed to have more than well nigh all the other kings of Christendom."²⁷ That Henry VII had accumulated a surplus, which if not as great, was comparable to that credited to him by report, is shown by Henry VII's lavish expenditure of his father's savings in the first period of his reign. But that this surplus was in the form of gold stored up in great chests is contrary to all evidence. The new revenues, and the unexpended balances of the Exchequer, of the Treasurer of Calais, of the Society of the Staple and of the Chamberlain of Berwick, together with the French pensions and the later subsidies were turned over to the Treasurer of the Chamber. His disbursements were only slightly less than his receipts in all the years for which there is a record of both, and the same was probably true in other years. As late as 1505 he had on hand in money, as the excess of receipts over expenditures up to that time, only £22,729.²⁸ Among his disbursements are included no large sums of money turned over to the king to be stored up by him in his private coffers. On the other hand, a great proportion of the Treasurer of the Chamber's disbursements had been for jewels, plate and loans, while great sums were owing to the crown for many causes in the form of obligations and recognizances. It was these jewels, plate and bonds of various sorts which made up the bulk of the wealth left by Henry VII to his son.

²⁶ *Venetian Calendar*, IV, 694.

²⁷ *Venetian Calendar*, I, 942, Sanuto's note on the death of Henry VII.

²⁸ *Accounts, Exchequer, Queen's Remembrancer*, 413/2, III, f. 120.

The note is made at the close of business for the year ending Michaelmas 1505.

CHAPTER VIII

WOLSEY AND NATIONAL FINANCE

With the customs, and the customs subsidies of tonnage and poundage and of wool, wool fells and leather granted to Henry VIII in his first Parliament for life, the vacations of bishoprics, marriages and wardships and the income from the crown lands, together with the wealth inherited from his father, Henry VIII was well fitted to meet financial demands made upon him.

The ordinary payments of the Treasurer of the Chamber continued to be much the same as they had been during the last years of Henry VII's reign. The extraordinary payments which Henry VII had ordered each year for buildings, loans and the purchase of jewels almost ceased; so that the disbursements of John Heron actually decreased to £156,000 for the first three years of the reign.¹ This sum included the expenses of the father's funeral, and the son's coronation, and even £37,000 paid to the old king's executors for carrying out his will. A close study of the Treasurer of the Chamber's payments for a greater number of years gives several indications that the frugality which marked Henry VII's court gradually gave way to slightly greater luxuriousness. This is seen for example in the increase in the number of servants attached to the court. At the very beginning of the new reign, the wages of the royal musicians, minstrels, yeomen of the chamber and falconers came to £2,500 a year. The employment of additional servants and the institution of the king's spears of honor, increased the wage charge to over £5,000 a year, early in 1510. Cloth of gold, purple velvet, russet and "tylsent" satin, rich sables and other furs, gold embroidery, spangles and beads were purchased from Italian merchants in much larger quantities than had ever been

¹ *Letters and Papers*, II, pp. 1441-1480, book of the Treasurer of the Chamber, April 22, 1509 to January 1, 1512.

the case in Henry VII's time. The wages and diets of ambassadors and the number of embassies sent abroad showed a considerable increase. Before 1509, the yearly costs of the household scarcely exceeded the £13,059 assigned for that purpose by Parliament.² Henry VIII's first Parliament increased the household assignment to £19,394.³ For a few years this sum was more than sufficient to cover the household expenses, which comprised the costs of food for the tables of the king and court, and the wages of the cooks and other servants, and officials of the household. During the first five years of the reign, more than £3,000 of this assignment was returned each year to the Exchequer unspent; then for a few years, the expenditures about equalled the assignment. In the year 1520-1521 the assignment was no longer large enough, and the Treasurer of the Chamber began to contribute augmenting sums to make up the deficit.⁴ This may have been due in part to the rise in prices; but it was chiefly due during the earlier part of the reign, to the increase in the number of servants and officials who lived at the court, and were fed in the household. The rise in prices did not begin seriously to affect the royal household until the end of the decade of the 1530's, when the expenditures rose from less than £25,000 a year in 1538-1539 and previous years, to £45,700 a year in 1545-1546.⁵ Wardrobe expenditures also increased.

Concurrently with the increased expenditures for ordinary purposes there was a decrease in receipts. In the Exchequer, the customs revenues showed a slight diminution after 1516. In the office of the Treasurer of the Chamber, £2,535 a year was lost by the restoration of lands by act of Parliament, to their former owners, and £7,585 by grants of land by the king by letters patent to his favorites. These losses, together with the increased assignments for the household on the royal lands, and new fees, wages and annuities, rendered the clear yearly land revenues payable to the Treasurer of the Chamber £24,719 smaller in 1515 than they had been in 1508,⁶ and reduced the income received by the Treasurer of the Chamber from the lands

² *Exch. L. T. R., Wardrobe Enrolled Accounts*, roll 8, membranes 1-26.

³ *Statutes of the Realm*, 1 Henry VIII, c. 16.

⁴ *Exch. L. T. R., Wardrobe Enrolled Accounts*, roll 8, membrane 32 b. ff.

⁵ *Ibid.*, membranes 43-47 inc.

⁶ *Rentals and Surveys*, no. 837.

and revenues in the survey of the General Surveyors and the Duchy of Lancaster to £16,367 a year.⁷

The decreases in revenue through the decline in the customs, and the alienations of the crown lands, with the increase in expenditures, especially in the household, were important. On the other hand, Henry VII's revenues had far exceeded his real expenditures, and as the increases in expenditure made by Henry VIII were comparatively small, and in no way show undue luxury or extravagance on the part of the king or court, it seems that the crown resources, the yearly revenue and the surplus left by Henry VII would have been sufficient for many years to meet the needs of the government, had no extraordinary drains been made upon them.

In view of this fact a brief analysis of the expenditures of the Treasurer of the Chamber during the early years of the reign is enlightening.

	Total expenditures of the Treasurer of the Chamber	Paid for wages of soldiers and sailors, and for purchase of ships, victuals and ordnance	Paid as subven- tions and aid to foreign govern- ments and princes
1509	£ 65,097	£ 1,231	
1510	26,725	1,775	
1511	64,157	1,509	
1512	269,564	181,468	
1513	699,714	632,322 + 10,040 crowns	£14,000 lent to the Emperor
1514	155,757	92,000	
1515	74,006	10,000	
1516	106,429	16,538	38,500 subsidy to the Emperor
1517	72,359	60	13,333 loaned to Charles V
1518	50,614	200	
1519	52,428		
1520	86,030		

⁷ *Rot. Reg.* 14 B. XI. This is an account for the year ending Michaelmas 1515.

⁸ *Letters and Papers*, II, pp. 1441-1480; *ibid.*, III, 2750; Add. Mss., 21481 and *Exch., Treasury Receipt, Misc. Books*, 215.

This table shows how insignificant were all the ordinary payments—not to speak of increases in those payments—of the most important financial official of the government compared with expenditures for war and foreign affairs. From the beginning of his reign, Henry VIII was eager to play an important part in the politics of Europe. Already in November 1511 he was at war with France as the paladin of the church, and the ally of Ferdinand of Aragon in causes in which England had no interest.⁹ It was by his active foreign policy and his participation in two wars with France¹⁰ which were not thrust upon him, but which he espoused with the enthusiasm of a reckless boy, that the financial situation was first made acute, and the revenue system as perfected by Henry VII rendered inadequate.

In the three and one-half years between the spring of 1511, when a small expeditionary force was sent to Guelderland and the fall of 1514 £892,000 had been paid for the wages and provisioning of the army, and navy and the purchase of ordnance and military stores.¹¹ Aids and subsidies to the Emperor took 32,000 golden florins in 1512, and at least £14,000 in 1513. After the accession of Francis I to the French throne, Wolsey continued these subsidies to the imperial cause, as an effective means of checking the pretensions of the French king, and of quieting

⁹ Fisher, *Political History of England, 1485-1547*, 170-171, "Henry had no direct interest either in Italy or in Navarre; and it was nothing to England that a papal legate should rule in Bologna, . . . But from the first Henry had been jealous of the French victories. . . . The young theologian was on his mettle."

¹⁰ The first war with France continued from 1511 to 1514, and the second war with France from 1522 to 1525.

¹¹ For the expedition of the Marquis of Dorset to Guienne, of 10,000 men assisted by 3,070 men in 18 ships under Lord Howard, £173,057 was appropriated; of which £34,394 was not expended (*Letters and Papers*, I, 3496, 3762). The expeditions of 1513 against France and Scotland required between November 1, 1512 and December 31, 1513, £607,000 for the army to France, £16,500 for the army against Scotland, £10,000 for ordnance and £28,500 for the purchase of ships (*Letters and Papers*, II, pp. 1441-1480; *Exch., Queen's Remembrancer*, 56/26-27; *Letters and Papers*, I, 4533; II, 54, 254, 2123; IV, 5724; *Exch., Treasury of Receipt, Misc. Books*, 2; *State Papers, Henry VIII* § 5, 114-120). The preparations for the year 1514 and the payment of the bills of the past year took another £92,000 (*Letters and papers*, pp. 1463-1466).

the war spirit at home.¹² In the form of payments to Swiss mercenaries, and of loans to Maximilian and his grandson, Charles, probably £80,000 was advanced in 1515 and 1516.¹³ Fatuously enough, too, Henry VIII had insisted in the treaty of 1514 upon the retention of Tournai in France, conquered by himself in 1513; and Tournai absorbed £40,000 a year every year between 1514 and 1518, when Wolsey surrendered the town to Francis I.¹⁴

After the shameful failure of Dorset's expedition to Guienne in 1512, Wolsey took personal charge of the direction of the war, including its finances. The money appropriated to war purposes was turned over by the Treasurer of the Chamber to John Daunce, John Dawtry and other treasurers of war. They came to Wolsey for instructions how to act,¹⁵ and paid out money on his warrants, which he issued for the payment of bills after he had personally examined them and found them correct.¹⁶ While thus carefully watching expenditure, the problem of obtaining revenues received his careful attention, as memoranda in his hand show.¹⁷ His activity drew from Bishop Fox, at the time of Fox's resignation from the council in 1516 the tribute "more diligence and labor for the king's rights, duties and profits . . . be in you than ever I see in times past in any other."¹⁸

¹² Brown, *Dispatches*, I, 100, 105, 110, 154, 155; *Venetian Calendar*, II, 706.

¹³ *Letters and Papers*, II, 2404. This is Wolsey's own estimate of the sum.

¹⁴ The garrison required 1500 men, at a cost of £21,120 a year (*Letters and Papers*, II, 1122; p. 1513; 4429). The repair of the fortifications took from £17,968 to £20,298 a year (*Letters and Papers*, II, 3065; III, 153; II, 4041; 4429; II, App. 45).

¹⁵ *Letters and Papers*, I, 5755.

¹⁶ Many of Wolsey's warrants are found in *Exch.*, *Queen's Remembrancer*, 56/10. A typical one is written on the bill itself—"Fellow Master Daunce, the king's pleasure is that ye content and pay the parcells above written to Gunston or to the bringer therof, T. Lincoln." (*Exch. Q. R.* 56/10 206). See also *Letters and Papers*, I, 5758, 5764, 5776, 5778; *State Papers, Henry VIII*, § 27, p. 78; *Accounts, Exch., Q. R.*, 58/7, 56/14.

¹⁷ *Letters and Papers*, I, 3884.

¹⁸ *Letters and Papers*, II, 1814.

The nation in Parliament was asked to contribute its share of the war expenses, which it did in three fifteenths and tenths and a poll tax of 1512, and the unsatisfactory grants of 1514 and 1515.¹⁹ The nation paid these taxes "unwillingly with extreme complaint;"²⁰ but even so, their total yield was less than a third of the war and post war charges. Of these the greatest part was paid from the King's inherited wealth, upon which such drains were made that it seems to have been entirely used up in the process.²¹ So depleted were the funds in the hands of the Treasurer of the Chamber who was keeper of the surplus, that in 1521, Mr. Myklowe, then Treasurer of the Chamber was reported as being "compelled to borrow money for his servants' wages."²²

With the exhaustion of the surplus, the second war with France was begun in 1522 under more unfavorable circumstances than the first. As there was no money in the king's coffers to pay its charges, the nation was called upon to meet them in their entirety. The fact that Parliamentary taxation was a slow method of raising funds which were needed immediately, and not very productive at best, probably determined Wolsey to secure the funds necessary for the preliminary expenses, by resorting to forced loans. In June, 1522, the king sent to the city of London to borrow £20,000. "The mayor sent for none but men of substance; Howbeit the crafts sold much of their plate, the sum was paid," and the king and the Cardinal prom-

¹⁹ In February, 1512, 2 fifteenths and tenths were granted (*Statutes of the Realm*, 3 Henry VIII, c. 22); in November, 1512, one fifteenth and tenth and a poll tax (*Statutes of the Realm*, 4 Henry VIII, c. 19); in 1514 a subsidy of £160,000 was voted (*Statutes of the Realm*, 5 Henry VIII, c. 7); and because of the failure of this, a subsidy of £110,000 was granted in February, 1515 (*Statutes of the Realm*, 6 Henry VIII, c. 26). This too was unsatisfactory; and in November, 1515, a second levy was authorized and a fifteenth and tenth granted (*Statutes of the Realm*, 7 Henry VIII, c. 9). The convocation of Canterbury granted four tenths in February, 1512, and the convocation of York, three tenths (Wilkins, *Concilia*, III, 652, 657).

²⁰ *Venetian Calendar*, II, 456, 798; Brown, *Dispatches*, I, 320.

²¹ This is asserted in Falier's report to the Venetian Senate, *Venetian Calendar*, IV, 694.

²² *Letters and Papers*, III, 1650, Richard Pace, the king's secretary to Wolsey.

ised repayment.²³ In August commissioners were authorized to assess loans in all the counties in England in a way which showed the levy in its true character of a tax—rather than a loan. During 1522 and 1523 £352,231 were raised by forced loans,²⁴ but this amount had fallen £42,000²⁵ short of the money required for the military undertakings, the fruitless expedition of the Earl of Surrey into Picardy in 1522, and the invasion of France by the Duke of Suffolk, and the raids on the Scotch border under Surrey in 1523.

Meanwhile, the convocations of York and Canterbury had met in the spring of 1523, and made the unprecedented grant of one-half the value of one year's income of all benefices to be paid in five years.²⁶ Parliament had assembled too. For the purposes of the loan of 1522 Wolsey had had a careful assessment of men's wealth made. He now asked for a grant of £800,000 which would be realized, on the basis of the assessment of 1522 by a tax of four shillings in the pound. After the bitterest debate, and a threatening visit by Wolsey in state to the Commons' House, a smaller subsidy than was asked, was granted. In the country at large there were mutterings against the grant as soon as it was known, and resentment when the commissioners came to levy the tax.²⁷ Since the first payment of the new tax was not due until the spring of 1524 and the new forced loans in anticipation of the subsidy, in the autumn of 1523 (when the treasury was empty)²⁸ were a failure, England abstained from active operations during 1524, and contented herself with subsidizing the Duke of Bourbon with a second 100,000 crowns.²⁹

During the past few years the tax-paying classes of the nation

²³ Hall, *Chronicle*, I, 258.

²⁴ *Letters and Papers*, IV, 214, 417. See also *Letters and Papers*, IV, App. 37 and III, 2483.

²⁵ This sum was paid out by the Treasurer of the Chamber for war purposes to make good the deficits (*Letters and Papers*, III, 2750).

²⁶ Wilkins *Concilia*, III, 698, 699.

²⁷ *Letters and Papers*, III, 3082; IV, 377; IV, App. 6.

²⁸ *Letters and Papers*, III, 3433, a letter from Wolsey to Henry VIII. Wolsey needed £10,000 to complete the next payment to Suffolk's army in France. "He has used all pains to bring in whatsoever is leviable that more cannot be done."

²⁹ *Letters and Papers*, IV, 365, 510. The first 100,000 crowns had been given him in 1523, *Letters and Papers*, III, 3288, 3307; IV, 510.

had contributed more largely than ever before to the support of the state and its enterprises, especially in the loans of 1522 and 1523. They had met practically the entire expenses of the campaigns of 1522 and 1523, and already in the Parliament of 1523 their discontent showed itself in opposition to further aid to the king. Their opposition hardened, until it became refusal, in 1525, when the battle of Pavia and the capture of Francis I by the Emperor led Henry VIII to decide to invade France and recover his crown of France.³⁰

Pavia was fought in February, 1525. If advantage were to be taken of it, money was necessary at once. Commissioners were sent out in March and April, 1525, to raise an Amicable Grant from the laity and clergy, "to conserve the honor of the realm and recover the crown of France," the king intending a personal invasion.³¹ Wolsey was chief commissioner to London. The London men refused to pay even though Wolsey threatened that resistance might cost some of them their heads.³² At Reading the people refused one sixth of their property (the amount asked for) but granted one twelfth, to Wolsey's anger.³³ The Bishop of Lincoln found that the priests of his diocese alleged poverty, though willing to satisfy the king to the best of their ability, while the landlords of the district claimed they could get no rent from their farmers.³⁴ In Essex, the Earl of Essex assembled the townships before him, but could not induce them to grant any money, as they said they had not even enough to pay the subsidy. Just a few days before this, a thousand persons had assembled in the borders of Suffolk, near the town in which the Earl was holding his sessions; which caused even those who would have been willing to pay, to refuse to do so, for fear of being hewn to pieces.³⁵ In Kent, Archbishop Warham warned Wolsey when the commissions were first sent out that it would be hard to raise money at this time, especially as the

³⁰ *Letters and Papers*, IV, 1212, Henry's assertion of his intentions.

³¹ *Letters and Papers*, IV, 1200, 1284, App. 34.

³² Hall, *Chronicles*, II, 36.

³³ Hall, *Chronicle*, II, 36.

³⁴ *Letters and Papers*, IV, 1330, a letter to the Bishop of Lincoln, May 12, 1525.

³⁵ *Ibid.*, IV, 1321, a letter of the Earl of Essex to Wolsey, May 9, 1525.

other parliamentary grants were now payable, and reported to him the dissatisfaction prevailing among the people. They spoke "‘cursedly’ saying that they shall never have rest of payments so long as some liveth." Some of the commissioners merely announced the king’s command without pressing it; the promise that the money would be repaid was discredited because the promise made in regard to the former loan had never been kept; the people were sorry at the captivity of Francis I and no longer desired the conquest of France, since if the king won France he would be obliged to spend his time and his revenues there; and finally all the sums (so said the people) already spent in France had not gained the king more land in it than his father had, "which lacked no wisdom or riches to win the kingdom of France if he had thought it expedient." It seems that even where there was a willingness to contribute there was lack of money, and poverty, or fear of "the multitude who persecute all who comply."³⁶ Warham and his fellow commissioners did not show themselves at any time over enthusiastic for the loan; they do not seem to have pressed for payment and they constantly excused the people to Henry VIII and to Wolsey, saying that they seemed minded to accomplish their demands but could not, because there was great poverty.³⁷ In Norfolk the mayor of Norwich answered the Duke of Norfolk that although an invasion of France would be timely, they could not raise the money required, but they offered their plate. The Duke wrote that though the Norwich people behaved well there would be great difficulty

³⁶ *Letters and Papers*, IV, 1243, 1266, 1267, 1305, 1306, 1311, letters of Warham and other Kentish commissioners.

³⁷ *Ibid.* It is not known how much money was in circulation at this time in England among the people, but the per capita circulation was probably comparatively small, especially in the country. A good bit of the opposition to taxes and other payments to the government especially in 1525 was due to the real lack of money among the people. Cromwell, in 1523, estimated the coin and bullion of the realm at not over £1,000,000 and opposed the subsidy because it would bring all the money of the kingdom into the king’s treasury. Perhaps this was not merely a figurative statement. The payments of 1522 and 1523 for the loans, had perhaps stripped the country of ready money, and large payments in 1525 were a physical impossibility. The Commissioners of 1525 repeatedly mentioned the scarcity of money.

in raising the money throughout the country.³⁸ The situation in Suffolk was complicated by lack of employment in the woollen industry in that county; and early in May the men in Suffolk, Essex and the scholars of Cambridge combined to the number of 20,000 men. The Dukes of Norfolk and Suffolk took prompt measures; the insurrection was checked at the outset; the leaders were arrested and the rest sent home.³⁹

Henry VIII finally yielded to the opposition, and even though he took it "unkindly" that the commons pleaded their poverty and their lack of money so that they would not grant anything, he gave instructions by letters missive to the commissioners to proceed "doulcely" rather than by violence, to reform them if possible.⁴⁰ Wolsey now made an effort to collect a "benevolence" from the Londoners. Though the aldermen by vote of the common council urged the men in their wards to grant a benevolence, this was refused; and the aldermen and the lord mayor, when summoned into Wolsey's presence refused to name any sum which the city would give.⁴¹

It is worth noting that no mention was made in these years of dissatisfaction with the unparliamentary character of the king's devices for obtaining money from the people. They alleged their poverty, that is, their unwillingness, rather than any illegality of method. They were chiefly disgruntled that money was obtained from them at all. They desired not to bear the burdens of the state, which was the king's business.

When the costs of the wars with France in Henry VIII's reign, or even the costs of single campaigns in these wars be compared with the costs of wars in the fifteenth century, — for example, Henry VII's war with France in 1492, — a vast increase is found. The upward curve of war costs probably equalled, and even surpassed the accelerated increase of national wealth. But the experiences of 1522 to 1525 showed that direct

³⁸ *Letters and Papers*, IV, 1235, a letter of the Duke of Norfolk, April 1, 1525.

³⁹ *Letters and Papers*, IV, 1323, a letter of Norfolk and Suffolk to Wolsey.

⁴⁰ *Ibid.*, IV, 1318, a letter of Henry VIII to the commissioners, May 8, 1512.

⁴¹ Hall, *Chronicles*, II, 39.

taxation, parliamentary or arbitrary, was too inelastic and too much opposed to the self-interest of the predominant classes of the state to make it possible to use taxation to divert large enough portions of the country's wealth to the government, to pay the costs of wars under modern conditions. Until taxes could be made more elastic and productive, and the prevailing popular attitude towards them changed, they were merely contributions in aid to the king in extraordinary times, so small now compared with the new extraordinary expenditures, that, contrary to the situation in the fifteenth century, but little dependence could be placed in them. If an active foreign policy continued to be followed involving the danger of war, it would soon become essential that the revenue system be radically extended.

Even in times of peace, the existing revenue system was showing occasional signs of inadequacy. There was a steady decline through the decade of the 1520's in the Exchequer revenues, while the expenditures of the government for ordinary purposes continued slowly to rise.⁴² After the first war with France, there are a few indications of financial stringency, which was probably temporary.⁴³ In the years after the second French war, the situation was more disturbing.⁴⁴

There was however, no serious inadequacy in the revenues for ordinary purposes as yet, and the foreign situation was not threatening. The pressure was not great enough to induce Wolsey, — the conservative reformer — perhaps even to suspect the need of any radical extension of the revenue system in the

⁴² Accounts of the Exchequer and of the Treasurer of the Chamber.

⁴³ In 1517, Guistinian, the Venetian Ambassador wrote "that those in authority here . . . now think it prudent to husband their resources, contrary to their previous custom" (Brown, *Dispatches*, II, 127). In 1519 it was necessary to send out letters missive to rich churchmen and nobles for loans (*Letters and Papers*, III, 562). In 1521 Pace, the king's secretary noted that the Treasury of the Chamber was empty (*Letters and Papers*, III, 1650). A little later Henry VIII wrote to the Earl of Surrey that he did not propose to appoint a new lieutenant in Ireland with like retinue "as ye now have," "because of the expense" (*Letters and Papers*, III, 1718).

⁴⁴ At the beginning of the year 1528 the outlook was so dark that in an estimate drawn up in January of all possible sums that might be levied, it seemed advisable to levy the unpaid portions of the loan of 1523, and to practice for the anticipation of the subsidy due in the spring.

near future. For what deficiencies there were, he trusted first to reform and retrenchment, and the removal of abuses in the existing order. In 1515 it was realized that grants of land had been made too lavishly to royal favorites; and an act of resumption of all the grants with certain exceptions was passed by Parliament.⁴⁵ In 1519 more frequent accounts by the regular treasurers were under consideration, together with the appropriation of fixed sums for various purposes and the reform of the Exchequer.⁴⁶ It was probably in connection with this reform of the Exchequer that the accounts of the wool subsidy collected at Calais by the Society of the Staple, and the accounts of the Clerk of the Hanaper ceased to be rendered there after 1519; and that many of the offices in the two branches of the Exchequer were filled with new men in 1552 and 1523.⁴⁷ Royal officials were warned at the same time to use extreme care that all the revenues and profits to which the king was rightly entitled should come to his hands.⁴⁸ In 1526 a great reformation of the household was affected by the Statutes of Eltham "which some said were more profitable than honorable."⁴⁹ Schedules of officials and servants, with their assigned wages were drawn up, the purchase of provisions was placed under the supervision of the treasurer and controller of the household; disbursements were to be entered every day and the accounts audited quarterly; superfluous servants were discharged and the number of the yeomen of the guard decreased.⁵⁰

Wolsey also, characteristically, endeavored to turn to best advantage his master's foreign policy. From the wars themselves, and the international situation he reaped whatever financial benefits were to be gathered there for the rehabilitation of

⁴⁵ *Statutes of the Realm*, 6 Henry VIII, c. 25. These resumptions and later confiscations like those of the Duke of Buckingham's lands, worth £6,045 a year, raised the crown lands to even greater value than they had been in Henry VII's time.

⁴⁶ *Letters and Papers*, III, 576, Memorandum of the administration of king's affairs, drawn up by Wolsey; *ibid.*, III, 576 (II); IV, 5749, 5750.

⁴⁷ *Exch. of Receipt, Declarations of the State of the Treasury*, VIII, IX, X.

⁴⁸ *Letters and Papers*, II, 4547; III, 3692.

⁴⁹ Hall, *Chronicle*, I, 56-57.

⁵⁰ The Statutes of Eltham, *Letters and Papers*, IV, 1939.

the royal revenues, in the form of the pensions from France and their increase. Upon Henry VIII's accession, Louis XII had acknowledged the obligation of the French pension which Charles VIII had granted to Henry VII.⁵¹ The old principal of 745,000 crowns was nearly all paid when the first war with France began. In 1514, Louis XII was forced to increase the principal still owing, to one million gold crowns, to be paid at the rate of one hundred thousand francs a year, just double the former payment.⁵² Beside providing revenue, the pension flattered the king. Henry VIII chose to regard it as a tribute paid to him as rightful sovereign of France, by the king in possession.⁵³ In 1518 Francis I was so eager for the return of Tournai that he consented to pay 600,000 gold crowns for it, to be paid as a pension of 25,000 francs, each half year in addition to the other pension. The French indemnities were thus increased to 150,000 francs a year.⁵⁴ In 1522, as one of the conditions for securing the English alliance, Charles V was compelled to guarantee the French pensions, should they be stopped as a result of the war.⁵⁵ The humiliation of Francis I in 1525 gave Wolsey an opportunity to drive a very hard bargain with him in the Treaty of More. Francis bound himself for the payment of 2,052,631 crowns to Henry VIII. This sum represented 631,579 crowns of the unpaid portion of the 1,000,000 crowns, agreed upon in 1514; 500,000 crowns still due of the 600,000 crowns for the restoration of Tournai; 30,000 francs owing by the citizens of Tournai to Henry VIII, 462,000 crowns in repayment of a loan of 378,960 crowns which Henry VIII had made to Francis I in November, 1520, and an indemnity of 299,542 crowns for the rupture in Italy. Payment was to be made in half yearly payments of 50,000 crowns of gold or 47,368 crowns of the sun, each. If all was paid before Henry's death, the same sum was to be paid each year during the rest of his life.⁵⁶

⁵¹ *Letters and Papers*, I, 14, 318, 626, 1027, 1181.

⁵² *Letters and Papers*, I, 5280.

⁵³ Brown, *Dispatches*, I, 237.

⁵⁴ *Letters and Papers*, II, 4476; III, 199

⁵⁵ *Ibid.*, III, 1508.

⁵⁶ Rymer, *Foedera O.* XIV, 58-68.

In April, 1527, there was a new opportunity to increase the pensions from France. The league of Cognac had been formed, and Francis was willing to pay high for an English alliance. The new treaties provided for the payment of a perpetual pension of 50,000 crowns of gold a year and 15,000 gold crowns worth of black salt, as a tribute in recompense of English claims to the French crown. The perpetual pension was to begin on Henry VIII's death and be paid in perpetuity to his successors; the black salt pension was granted for the term of Henry's own life. It was never paid in black salt, and was later commuted to a money payment of 10,000 crowns.⁵⁷ Wolsey's own opinion of the treaty, and his regard of its financial advantages is seen in a speech of his reported by Hall, which he made on the occasion of the peace of Amiens a few months later. "Therefore now my lords, be merry, for the king shall nevermore charge you with wars in France . . . so that with exactions for wars of France you shall be no more charged, for the king shall have no need, because that he by this league shall be the richest prince of the world. For I assure you he shall have more treasure out of France yearly than all his revenues and customs amount to, yea and count his wards, forfeits and all such casualties."⁵⁸

Finally, at Cambrai in 1529, Wolsey further increased the payments from France by persuading Francis I to assume the debts of Charles V to Henry VIII. Francis assumed these obligations of the Emperor as part consideration to the Emperor, for the release of his two sons, the Dauphin of Vienne and the Duke of Orleans, held as Hostages by Charles V.⁵⁹ But long before the treaty of Cambrai was signed, the simultaneous ap-

⁵⁷ In December, 1530, the black salt pension was converted into a money payment, with 30,000 crowns for arrears and 10,000 crowns yearly tribute (*Letters and Papers*, IV, 6755, 6775).

⁵⁸ Hall, *Chronicle*, II, 105-106.

⁵⁹ These obligations were various loans made to Charles since the beginning of the reign, with a debt of £100,000 owing by Maximilian to Henry VII, and an advance on the security of fleur de lys pawned by Maximilian with Henry VII; the indemnity for the loss of the French pensions between 1552 and 1525, and a penalty of 500,000 crowns for Charles's breaking his agreement to marry Mary (*Letters and Papers*, IV, 5881, 6231). Francis took these obligations at an enormous discount.

pearance of the divorce question in England and the capture of Rome by Charles V, had ruined Wolsey's plan to augment the royal income by pensions from France. A French alliance was absolutely essential,⁶⁰ and for that alliance England paid, not only in remitted pension payments, but in actual cash subsidies.⁶¹ During the years from 1531 to 1534 the payment of pensions was resumed; but after the May or November payment in 1534, Francis took advantage of the situation of England at home and abroad, on account of the divorce question, to cease payment.⁶²

Wolsey was supremely great in diplomacy and very skilled in administration. He did not however, grasp the trend of the financial problem. Reforms and retrenchments temporarily relieved pressing situations; the increase of the French pensions precariously enhanced the royal income. But he did nothing which indicates that he saw that, since the small margin between income and disbursements gave the king no opportunity to save much money, and taxation could not be depended upon to provide rapidly and abundantly enough the money needed for wars or other sudden contingencies, the normal royal revenues would have to be vastly increased for the public safety, in the not far distant future. But even the greatest statesmen seldom cross bridges until they come to them.

⁶⁰ The necessity of the French Alliance is recognized in a letter of Knight to Wolsey (*Letters and Papers*, IV, 5771). See also a later statement of the recognition of the situation, in a report of Henry VIII's remarks to Chapuys, the imperial ambassador (*Ibid.*, XX, part I, 1197).

⁶¹ Between August 18, 1527, when the Treaty of Amiens was signed, and May 1, 1529, £112,437 was paid to France; £49,148 in money, £10,000 in the form of a jewel, and £53,289 in remitted pensions (*Letters and Papers*, IV, 5515). See also *ibid.*, IV, App. 183; IV, 1604 (3).

⁶² In 1531 and 1532, 15,000 crowns was paid each year for the arrears of the salt "tax;" 10,000 crowns for the commutation of the salt "tax;" 100,000 crowns for the debts of Charles V, and 94,736 crowns for the regular pension. In November, 1532, the last payment of the arrears of the pension of black salt, and the last payment for the debts of Charles V were made; so that in 1533 and 1534 the payments were reduced to 10,000 crowns for the salt "tax" commutation, and 94,736 crowns of the regular pension (*Letters and Papers*, V, 222, 1065, 1504). The November payment in 1534 is described as taking "the road of Germany to make a brewing" (*Letters and Papers*, VII, 1554, Chapuys to Charles V).

CHAPTER IX

CROMWELL'S EARLY ADMINISTRATION

Without question Cromwell's rapid rise to power was due to his services to the king in his "grete matier" of the divorce. But if we may believe one of the contemporary stories, in his first interview with Henry VIII, Cromwell promised to make him the richest king who had ever ruled in England. Henry was so struck by this promise that he at once made Cromwell a member of his council.¹ Certainly he was early interested in government finance. As early as 1531 he issued orders which show that he controlled financial officials;² in 1532 he began to act as a special treasurer for new revenues;³ and from 1533 to his fall, every financial measure is noted in his remembrances, in a way indicating that he was personally occupied with planning and carrying it through. The "Remembrances" are short disjointed jottings on slips of paper, or on the backs of letters or important documents, which are the best source for a study of the things with which Cromwell was busied.

The financial situation was not serious or critical on Wolsey's fall. There were occasional difficulties, but no pressing urgent necessity for a radical reorganization. But several developments in the early years of Cromwell's administration brought the problem nearer the point where it must be solved. First, there was continued decrease in some of the old sources of income. As already noted, the French pensions ceased, except in the years 1531 to 1534. The Customs revenues, which averaged £42,643 a year during the first decade of the reign, and £35,305 a year from 1521 to 1529, fell to £32,195 for an average year during

¹ Merriman, I, 17, 76. The story is told in a letter of Chapuys, to Granvelle describing Cromwell, November 21, 1535.

² *Letters and Papers*, V, 277.

³ *Ibid.*, V, 1639; VI, 228, 717; VII, 430.

the period 1530 to 1538.⁴ The loss was due to a sharp fall in the wool subsidy revenues.⁵ Of greater effect than the "decay" of the revenues were increased expenditures. Reference has already been made to the rise in the expenses of the household. Another most important increase after 1529 was the king's outlay for the erection of new palaces and the purchase of new manors. This became so great that Cromwell in 1534 wrote in one of his remembrances, "What a great charge it is to the king to continue his buildings in so many places at once . . . if the king would spare for one year, how profitable it would be to him."⁶ Harbor improvements were begun at Dover; and extensive works were carried out in the fortifications and harbor of Calais, at the cost of many thousands of pounds each year.⁷

Troubles on the Scotch borders and insurrections in Ireland brought new charges. The support of an army against Scotland to prevent a repetition of the forays of 1532 cost £24,800 during the year following.⁸ Irish revenues scarcely covered the costs of the Irish government in ordinary years. When Kildare's rebellion broke out in 1534, and an army of two thousand foot and three hundred horse were sent over to subdue the country, a deficit of £38,000 for the first year's campaign had to be met from the English treasury.⁹ Next, though of more interest

⁴ Schanz, II, 12.

⁵ The wool subsidy had yielded £15,231 a year in the first decade of the reign; it fell to £5,701 a year in the period 1530-1538. In other customs dues there was a slight increase in these last years.

⁶ *Letters and Papers*, VII, 143, Cromwell's Remembrances, January, 1534. In 1536 Cromwell again referred to such expenditures in a paper of "things done by the king's highness sythyn I came to his service" (*Letters and Papers*, X, 1231).

⁷ Works on a large scale at Calais were begun after Henry VIII's visit in 1532. See *Chronicle of Calais*, (Camden Society), App. 98, 123, 128; *Letters and Papers*, V, 370, 1668; XVI, 303; VI, 228. In May, 1533, the mayor and citizens of Dover petitioned the king to "have the harbor dug out," since it had been filled up by small stones cast up "by violent rages of the sea." Work was begun in 1535 (*Accounts, Exch., Queen's Remembrancer*, 58/13; *Letters and Papers*, X, 102; XI, 1254; XII, part I, 92; XIII, part II, 223).

⁸ *Letters and Papers*, VI, 664, 1162; accounts of Sir George Lawson, Treasurer of the Scotch Wars, September 14, 1532, and September 27, 1533.

⁹ *Letters and Papers*, VIII, 788; IX, 217, Receipts of William Brabason,

than importance, in the series of new and enhanced expenditure during the first years of Cromwell's administration, were payments directly connected with the divorce of Queen Catherine. On the divorce itself, Henry VIII spent very little money, and that chiefly in salaries of ambassadors and special agents to Rome, bribes to high officials of the Curia and gratuities to University doctors for subscribing to opinions favorable to Henry's position.¹⁰

Though the divorce itself cost little, the foreign situation created by the divorce had tremendous effects on the financial history of the Tudor period. The Emperor Charles V bitterly resented Henry's attempt to divorce his aunt, Catherine of Aragon. Not only did he prevent the Pope from giving a decision favorable to Henry VIII, but there seemed to be danger all through the period from 1529 to 1536 that the Emperor would wage war on England in his aunt's behalf. To offset this danger, the English alliance with France was carefully cultivated, at great cost in remission of pensions; the Protestant princes of Germany were approached with a view to an alliance, and Jürgen Wullenwever of Lübeck was subsidized, in his efforts to secure the election of a Danish king opposed to Charles V.¹¹ The fear of an imperial attack was especially strong in the summer of 1533, after the passage of the Act of Appeals, the final sentence of divorce by Cranmer's court, the coronation of Anne and the papal bull excommunicating Henry. In the memoranda of Cromwell many notes are found which indicate his concern for measures of defence. — "To remember the king for the reparation of his navy;" "a bill to be drawn up for granting money for fortifying the frontiers;" "The Pope is only Bishop of Rome . . . Devices to be made for repairing the fortifications, especially on the frontiers of Scotland . . . The King's navy, ordnances and munitions of war, bows guns . . . to be Treasurer of the Irish Wars. To May, 1535, he had received £34,628 from England and £3,373 from the king's revenues in Ireland. In August, 1535, he received an additional £4,438 from England.

¹⁰ *Letters and Papers*, IV, V, VI, *passim*.

¹¹ Henry VIII loaned Wullenwever 20,000 guilders in 1534; in 1535 he sent a sum rumored to be 90,000 ducats; and in 1536 he sent £5,000 (*Letters and Papers*, VIII, page XIX; IX, 287; X, 376).

repaired and provided for.”¹² The works at Calais were most carefully surveyed, the ships of the royal navy were ordered to be got ready and orders were issued to erect block-houses and forts at various places in defence of sudden invasions — which Chapuys, the imperial ambassador said showed that “they are beginning to be afraid.”¹³

During these years of stress foreign observers in England constantly refer to a new development in Henry VIII's character or policy, which they did not quite understand. From being liberal, he had become avaricious, in the words of Lodovico Falier to the Venetian senate,¹⁴ and Chapuys showed in his letters to Charles V that he had the same general feeling. Cromwell even encouraged him in this simple belief; in the early summer of 1535 he took Chapuys aside privately and assured him, “to be frank, his master (Henry VIII) had become very greedy; and unless some other way were found to spend his money, he would collect in his treasury all the money of the kingdom to the great injury of private persons. He (Cromwell) and the other councillors wished to find means to make him spend it for the general good, thinking this would also moderate his greediness.”¹⁵ But simple greediness does not explain the king's desire to fill his coffers. When Carlo Capello wrote to the Signory of Venice, “he is amassing money and hastening the fortifications of the Tower of London,” he was joining the process, with a clue to the cause in one sentence.¹⁶ Cromwell's note “What necessity there is to cause treasure to be laid up for all events;” suggests the true explanation, and in many of the numerous schemes drawn up by him for adding new revenues to the crown, the reason given is the fear of an attack by the Emperor.¹⁷

In 1525 the lack of money, and the impossibility of getting any quickly from the nation had compelled Henry VIII to withdraw from the war with France. The situation which now

¹² *Letters and Papers*, VI, 997, 1381, 1487, Cromwell's Remembrances.

¹³ *Letters and Papers*, VI, 1460, a letter of Chapuys to Charles V.

¹⁴ *Venetian Calendar*, IV, 694, Lodovico Falier to the Senate.

¹⁵ *Letters and Papers*, VIII, 826, a letter of Chapuys to Charles V, June, 1535.

¹⁶ *Venetian Calendar*, IV, 788.

¹⁷ *Letters and Papers*, VII, 143.

faced him was the possibility of a war not of his own choosing or volition. He would be on the defensive, and could not withdraw when he pleased. It was therefore essential for the safety of England and his own security as king, to accumulate a sufficient surplus to enable England to carry on a war vigorously as long as the enemy might attack. To fill up the War Chest, without which the security of the throne and the national safety was endangered, new revenues were necessary. Experiments with taxation again were made, but they only complemented the results of Wolsey's and Henry VII's experiences. The very rumor, current in 1531 that the king meant to draw from the Commons a large sum on the ground that they were involved in Wolsey's *praemunire*, as had been done in the case of the clergy, led the House of Commons to demand a free exemption from the charge. "As the king would not listen to them for some days, there was great a murmuring among them in the Chamber of Commons, where it was publicly said in the presence of some of the privy council, that the king had burdened and oppressed his kingdom with more imposts and exactions than any three or four of his predecessors, and he ought to consider that the strength of the king lay in the affections of his people. And many instances were alleged of inconveniences which had happened to Princes through the ill treatment of their subjects. On learning this, the king granted the exemption . . . without any reservation."¹⁸ In the next year fortunes were again essayed in Parliament. The necessity of the grant was intimated to the Commons in January, 1532;¹⁹ but nothing was done by the Commons. Finally, on April 16, 1532 the king sent the Chancellor, the Duke of Norfolk and other lords to the House of Commons, to show the need of making a harbor at Dover, of fortifying the Scotch frontier, and making preparations for war during the peace. Two weeks later, two men arose in Parliament and boldly spoke against the fortifications of the Scotch frontier, for which Henry had asked aid, saying that it was the best fortification to maintain peace with the Emperor and take back Catherine. The words were well taken by

¹⁸ *Letters and Papers*, V, 171, a letter from London, April 2, 1531.

¹⁹ *Letters and Papers*, V, 762, a letter of Chapuys to Charles V, January 30, 1532.

nearly all present and nothing was concluded. "The king was displeased and sent for a majority of the deputies, and made them a long speech in justification of his conduct in the divorce." Parliament granted a fifteenth. The king was so displeased at the smallness of the grant, that he was not present at the last meeting of the session and eventually rejected it.²⁰

Cromwell soon learned to render Parliament more docile by controlling the election of members; and later Parliaments could be got to vote taxes without difficulty.²¹ But the grants were never commensurate with the needs of the state, even when voted by subservient Parliaments; and worse, there was never any guarantee that the people would pay even the moderate taxes without murmuring.²² The medieval forms and notions of taxation were equally unfitted either to cover the growing deficiencies in the state disbursements, as the experiences of the fifteenth century showed; to finance wars directly, as Wolsey found; or to help the king to lay up a large surplus against a threatening war in the future, as was now discovered.

Since taxation was ineffective in aiding the king to accumulate treasure; "against all events," and even to meet the increasing expenses of the government, and make good decreasing revenues, the normal permanent revenues of the crown had to be increased, without infringing the self interest of the middle class whose alliance with the crown formed the Tudor Commonwealth. Cromwell's general problem was the same as that which Henry VII had coped with. The reduction of the nobility and the conversion of its wealth to the purposes of the crown by forfeiture or escheat of lands, and by way of great fines was Henry VII's solution. What the nobility was to Henry VII, the Church was to Cromwell. His work was simply the historical evolution of Henry VII's policy, under certain different conditions and circumstances. The permanent crown revenues were about to

²⁰ *Letters and Papers*, V, 941, 989, 1046, letters of Chapuys to Charles V, April and May, 1532.

²¹ Merriman, *Life and Letters of Thomas Cromwell*, I, 91-92.

²² While the tax of 1532 was being discussed in Parliament, many men in London believed that attempts to collect the tax would lead the people to mutiny. *Letters and Papers*, V, 762, 941, letters of Chapuys to Charles V. The same was true in 1534 when a large grant was actually voted. *Ibid.*, VII, 1554.

receive their second great increase of Tudor times; and as in Henry VII's day, the large part of this increase came in the form of land or revenues from lands.

Diversions of the wealth of the church from the church to the crown were no new thing in England. Quite apart from the use of the revenues of the great ecclesiastical benefices as salaries for the great officials of the crown, of which Wolsey furnishes a striking example,²³ and apart from the tenths voted by the Convocations to the Crown, were the actual seizures of Church property in times past. Edward II dissolved twenty-three preceptories of Templars and only partially restored their lands to religious uses;²⁴ the Commons in 1410 petitioned for the confiscation of all the property of the church — a petition which was remembered in Parliament in 1529²⁵ — and Henry V seized the property of the alien priories in England.²⁶ And that perhaps some further plan was on foot toward the end of Henry VII's reign is suggested by Dudley's warning to Henry VIII, "Restrain yourself from appropriation of benefices or to unite any house of religion to another, for if this do continue it shall by all likelihood destroy the honor of the Church of England."²⁷ Moreover, "William of Wykeham and Chichele, Wayanflete and Fisher, Alcock of Ely, and Smith of London had all diverted wealth from monastic into educational channels, and this idea of utilizing conventional revenues for the promotion of learning and culture had been carried out on a large and impressive scale by Wolsey," who had suppressed more than twenty conventional houses for his school and colleges at Ipswich and Oxford.²⁸

The newer and larger appropriations of the wealth of the Church now begun were quite in the current of the events of the day. Sequestration of church property into lay hands was in the air all over Europe. In Norway the spoliation of the treas-

²³ Cavendish, *Life of Wolsey*, p. 95. He was Archbishop of York, Bishop of Winchester and held the Abbey of St. Albans in commendam, and the Sees of Bath and Wells, of Worcester and of Hereford in ferme.

²⁴ Fisher, *Political History of England*, 369.

²⁵ *Letters and Papers*, IV, 6043.

²⁶ Fisher, *op. cit.*, 369.

²⁷ Dudley, *Tree of Commonwealth*, 5.

²⁸ Fisher, *op. cit.* 369, 370.

ures and wealth of the churches and monasteries was carried out to the benefit of Frederick I, and others.²⁹ In Switzerland the monastic property had already been turned over to the purposes of education and poor relief.³⁰ In Germany, Landgrave Philip and the Estates of Hesse — to give but one example — had suppressed the majority of religious houses by the regulations of the Diet of October, 1527. From the property, compensation was given to the inmates, the University of Marburg was founded, the nobility were provided for, and the remainder of it was constituted a fund for the use of the prince, the nobles and the cities under the control of the estates.³¹ Even in Catholic Europe, the property of the Church was menaced. The Austrian government went far in claiming secular administration of the episcopal domains, and the papist junkers were more Lutheran than the Lutherans themselves in the scramble for conventual lands.³²

The confiscation of all Wolsey's property after his fall in 1529 was the preliminary act to the "great sacrilege" in England.³³ In December, 1530, it was conveniently discovered that the whole clergy of England was involved in the Praemunire of Wolsey. The spiritual lords were called in by process into the King's Bench to answer to that charge.³⁴ The Convocation of Canterbury was quickly called, and the clergy offered the King 160,000 ducats for a pardon by act of Parliament. This sum, the King refused to accept; saying he would have 400,000 ducats (£100,000) or he would punish everyone with extreme vigor.³⁵ The Convocation was so thoroughly cowed that it refused to allow the Papal Nuncio to address it, when he appeared offering to intercede with the King, "for they had not the King's leave to

²⁹ *Cambridge Modern History*, II, 618.

³⁰ *Ibid.*, II, 321.

³¹ Ranke, *Deutsche Geschichte im Zeitalter der Reformation*, in *Sämmtliche Werke*, II, 317.

³² *Ibid.*, II, 313-314.

³³ Du Bellay the French ambassador valued this at 500,000 ducats or £125,000 (*Letters and Papers*, IV, 6030), a merchant in England at 900,000 angelots or £150,000 (*Letters and Papers*, IV, 6057).

³⁴ Hall, *Chronicle*, II, 183.

³⁵ *Letters and Papers*, V, 62, a letter of Chapuys to Charles V, January 23, 1531.

speak with him.”³⁶ On January 24,³⁷ they voted £100,044 8s. 8d., only to find on February 7, that there was another condition to the royal pardon, — that they acknowledge the King as Head of the English Church.³⁸ It may be, as one scholar asserts,³⁹ that the object of prime importance in the mind of the King and Cromwell, was to secure the recognition of Henry VIII as Head of the English Church; but certainly the circumstances which led to action just at this time were the need of money to make up the probable shortage in funds, and to provide revenue in case of a war with the Emperor. That the King himself had this last point very much in mind is seen in his demand, probably made at the same time that the recognition of the King as Head of the Church was insisted upon, that in case he or any of his allies made war, the clergy should be bound to advance the money promised by them at once, without waiting for the regular times of payment spread over five years as offered by the Convocation.⁴⁰ This the clergy refused; they even seem to have withdrawn their offer of money for a moment,⁴¹ but it was finally agreed that the King should accept £100,000 to be paid in five yearly installments, and that he should not press for payment before the expiration of five years.⁴² The Convocation of York accepted the terms made between the King and Canterbury, and granted to the King £18,840 0s. 10d.⁴³

But though the king could thus cow the Bishops in the Convocations, payment of the sums was not secured without disorder. The Bishops assessed contributions to these grants on their clergy; Bishop Stokesley of London called the curates to London at St. Paul's to have their benefices assessed; some eighteen noblemen among the priests assembled riotously and made an assault on the Bishop's Palace at St. Paul's where they continued

³⁶ *Letters and Papers*, V, 62.

³⁷ Wilkins, *Concilia*, III, 724.

³⁸ *Ibid.*

³⁹ Merriman, *Life and Letters of Thomas Cromwell*, I, 93-96.

⁴⁰ *Letters and Papers*, V, 105, a letter of Chapuys to Charles V, February 14, 1531.

⁴¹ *Letters and Papers*, V, 105.

⁴² *Ibid.* See also *Letters and Papers*, V, 149, a letter of the Archbishop of Canterbury to the king, notifying him of the grant.

⁴³ Wilkins, *Concilia*, III, 744.

for an hour and a half. Eighteen or twenty persons were arrested and jailed in connection with the disorder.⁴⁴

The payment of £118,800 was not the only exaction made from the clergy in 1531. Many individual churchmen were excepted from the pardon for praemunire, and had to make their peace separately with the King. The Bishop of Bangor paid £333 6s. 8d., the Bishop of Dublin, £1,466 13s. 4d., the Dean of Arches, £133 6s. 8d. Moreover, the great Churchmen seem to have been very heavily fined for offences of which there is no record since the reign of Henry VII. For the escape of seven prisoners, the Bishop of Bath paid £700; the Bishop of Lincoln for a similar offence £666 13s. 4d., and the Bishop of Hereford for an untrue certificate of non-bigamy which he had issued, £666 13s. 4d.⁴⁵ Three years later, in 1534, the Bishop of Norwich was accused of having fallen anew into praemunire, on the ground that he had cited the Mayor of Thetford before him in a spiritual case, although the town of Thetford enjoyed exemption from the Bishop's jurisdiction. The Bishop was arrested, and finally pardoned by the King and in return, made the King a "free gift" of £10,000. Chapuys suggested that his great wealth was as important a cause for his accusation as the alleged offense.⁴⁶

In 1532, despite the fact that the clergy were now paying £24,000 a year to the Royal Treasury as the annual installments of the £118,800 promised by the Convocations, they were called upon for additional contributions. The Convocation of Canterbury sat during April and May 1532. When Parliament granted the fifteenth, the Duke of Norfolk so informed the Convocation "and warned the prolocutor and others, that they show themselves not less prompt and ready to assist the royal needs."⁴⁷ The Convocation practically refused the Royal command, much to the King's displeasure, and Chapuys writes that he was therefore determined to succeed, either "in a friendly way or other-

⁴⁴ *Letters and Papers*, V, 387, a bill filed in the Star Chamber by Christopher Hales, the Attorney-General. See also Hall, *Chronicle*, II, 200 ff.

⁴⁵ *Letters and Papers*, V, 637, "fines made with divers persons by the king's commandment."

⁴⁶ *Letters and Papers*, VII, 171, 270, 296.

⁴⁷ Wilkins, *Concilia*, III, 748 f.

wise.”⁴⁸ The Convocation of York, however, granted a tenth to the King.⁴⁹

But already the minds of the King and his ministers were beginning to busy themselves with large plans for the annexation of the temporal estates of the Church to the Crown. The idea was in the air as early as 1531, when Falier the Venetian Ambassador reported to the Senate that Henry seemed bent on detaching himself from the Roman Church and annexing the ecclesiastical revenues to the Crown.⁵⁰ Rumor had it in January, 1533, that Cranmer, newly elected Archbishop of Canterbury, would renounce all temporalities of his See to the King—as a good way to force the rest to do the same.⁵¹ In the next month, Chapuys understood that the King intended to raise a regiment of horse and was going to take the goods of the Church to pay them,⁵² and a month later, these rumors of intended confiscation of Church property received confirmation from the lips of the King himself. In a long personal interview with Chapuys, he said that he was going to repair the damage done by John in making England tributary to the Pope and “also to reunite to the Crown the goods which Churchmen held of it which his predecessors could not alienate to his prejudice and that he was bound to do this by the oath he had taken at his coronation.”⁵³ A little later we have a suggestion written in the hand of Cromwell’s clerk, which points to Cromwell as the author of it, that Cranmer write a book defending the King’s marriage and abolition of Papal power, exhorting the clergy to avoid all ambition, all delicate fare, and “to be ready with heart and mind to depart and dispose among the people of this realm, lands, goods and money.”⁵⁴ In October there is a note of an act “to be made at the Parliament” “that if war against the

⁴⁸ *Letters and Papers*, V, 1046, a letter of Chapuys to Charles V, May 22, 1532.

⁴⁹ Wilkins, *Concilia*, III, 748.

⁵⁰ Falier’s report to the Senate in 1531 (*Venetian Calendar*, IV, 694 [p. 299]).

⁵¹ *Letters and Papers*, VI, 89, a letter of Chapuys to Charles V, January 27, 1533.

⁵² *Ibid.*, VI, 180.

⁵³ *Ibid.*, VI, 235.

⁵⁴ *Ibid.*, VI, 738.

King is attempted on the Pope's occasion, the King shall have for his defence the moiety of the temporal lands of the Church,"⁵⁵ and a document drawn up in November, 1534, shows the plan finally contemplated. All the temporal possessions of the Church both of the secular and of the regular clergy, except property of specific yearly value for the payment of the income of the clergy "were to be made sure to the King and his heirs for the defence of the realm and the maintenance of his royal state." The Archbishop of Canterbury was to have 2,000 marks yearly, the Archbishop of York, £1,000 and the other Bishops 1,000 marks. Lands and possessions of all monasteries of which the number of inmates was under thirteen persons were to go to the King, and in other monasteries every monk being a priest should have 10 marks a year; every novice not a priest £5; the Abbot was to have as much as all the others together and the residue was to go to the King. The King was to receive one-half the revenues of every Cathedral Church and one-third of those in each Archdeaconry. The Commander of the Knights of St. John was to have 1,000 marks; the rest of his possessions went to the King and at his death the whole; and likewise the lands of every Commandry, at the death of the knights in possession. Moreover, Parliament was to grant a temporal subsidy of 2s. in the £ to be paid in two years, and a clerical subsidy of 4s. in the £ to be paid in two years "for charges of the present wars, for defence of Ireland, for making of Dover Haven and other fortresses against Scotland."⁵⁶

Chapuys, and John Hussee, the well informed London agent of Lord Lisle, Deputy Governor of Calais, had expected some such measure to be introduced into Parliament, when it reassembled in January, 1534,⁵⁷ and they wrote of rumors that some of this confiscated property would be distributed among the nobles. No bill was presented at the session of Parliament which began in January, 1534; but during the summer Chapuys

⁵⁵ *Ibid.*, VI, 1381

⁵⁶ *Cott. Mss., Cleopatra E. IV*, 174. The clerical subsidies would be voted by the Convocations, but Parliament would have to pass a validating act since Convocations had lost the right of independent actions in 1533 by *Statutes*, 25, Henry VIII, c. 19.

⁵⁷ *Letters and Papers*, VII, 24, 114.

was convinced that some such measure would be taken up in November when Parliament reassembled,⁵⁸ and later, in September, Cromwell seems to have mentioned the matter to him.⁵⁹

But even the Parliament which had just severed the relations between England and Rome was scarcely ready for so sweeping a change, and there is no record that a bill for the purpose was introduced. Instead, Cromwell and the King satisfied themselves with obtaining the first fruits of all benefices vacant after January 1, 1535, and the annual tenths of all benefices, while on the other hand, the last payments of the £118,800 granted by the Convocations in 1531 were excused.⁶⁰ A new assessment of the value of all benefices in England was to be made by Royal Commissioners. The assessment of 1291 which had been in force up to this time (except for the grant of £100,000 in 1523) was finally overthrown, and the clergy were to be taxed on the annual value of their benefices. The new revenue was expected to yield £30,000⁶¹ per year, a sum equal to about one-fifth of the revenues in 1529; and to administer it, John Gostwike was soon after appointed Treasurer and Receiver-General and Commissioner of First Fruits and Tenths.⁶²

As the year 1535 opened, Cromwell seems to have been very proud of his achievements in finance, and to have expected very much from them. Both he and Henry VIII declared to foreign ambassadors the wealth and authority of the Crown and the quiet of the Kingdom, and spoke enthusiastically of the new increases in revenue.⁶³ It is of course impossible to know how far these statements were made for effect, and how far they

⁵⁸ *Ibid.*, VII, 871.

⁵⁹ *Ibid.*, VII, 1141. Chapuys wrote to his master Charles V, "Cromwell understands that at the said Parliament the King will distribute among the gentlemen of the Kingdom the greater part of the ecclesiastical revenues to gain their goodwill."

⁶⁰ *Statutes of the Realm*, 26 Henry VIII, c. 3.

⁶¹ *Letters and Papers*, VII, 1490, a letter of Brian Tuke, Treasurer of the Chamber, to Cromwell.

⁶² *Ibid.*, VIII, 802, 820.

⁶³ *Letters and Papers*, VIII, 174, Palamedes Gontier, the French ambassador to Admiral Chabot, reporting a conversation of Cromwell. A draft letter of Henry VIII to De Brion with the same purport is calendared in *ibid.*, VIII, 339.

revealed the real thoughts of Cromwell and Henry VIII. But if they expressed a genuine conviction, it was one destined to be disappointed. There were troubles in Ireland, the French pensions were no longer paid, the new ecclesiastical tenths did not come in rapidly, and the subsidy granted by Parliament could not be collected in many places, owing to the surliness of the people and the failure of the crops.

The government added to its perplexities by the criminal execution of Bishop Fisher and Sir Thomas More, together with the Carthusian Monks, in the summer of 1535. A thrill of horror went through Catholic Europe; and the papacy was forced at length to proceed to formulate the bull of privation and deposition of Henry VIII. Probably there was no real danger that the Emperor would carry it out; but the fear that he would do so was almost a panic in England in the latter part of 1535, and this was heightened by the rumor of an understanding between the Emperor and the French King in February and again in December of 1535,⁶⁴ even though nothing came of it. The Venetian and other foreign merchants expected to leave England and refused Cromwell's very generous concessions of customs privileges, offered to induce them to stay.⁶⁵ The French and German alliances were again sedulously cultivated. But above all, in the imminent danger of war, in case of invasion, money was necessary. It was under these circumstances that the conversion of a new portion of the wealth of the Church to public uses was necessary. In July, 1535, just a few days after the execution of Sir Thomas More, Cromwell began the royal visitation of the monasteries;⁶⁶ and the first step in the suppression of the monasteries had been taken.

⁶⁴ Fisher, *op. cit.* 357.

⁶⁵ *Letters and Papers*, IX, 965.

⁶⁶ *Letters and Papers*, VIII, 1127, 1130.

CHAPTER X

THE DISSOLUTION OF THE MONASTERIES

The plan for the secularization of all church property which Cromwell had been considering in 1534 was dropped in November of that year, when the annual tenth of the value of all benefices was granted to the king. As early as January, 1535, new plans seem to have been under deliberation for diverting more money from the Church to the Crown. There exist draft commissions for a visitation of all churches and monasteries, and other draft commissions for the visitation merely of all monasteries to find the value of their rents and lands among other things, dated in January 1535.¹ The plan as finally worked out, for the suppression of the smaller houses took shape slowly. In March, Cromwell made a note "to remember all the jewels of all the monasteries in England and especially the cross of emeralds at Paul's."² Later during the spring or the summer, the king advised with his council on the question of suppressing the monasteries, and the proposal was seriously opposed by at least one member of the council.³ All that we know definitely is that at the beginning of June the visitation of the monasteries had been decided on,⁴ and very early in July Cromwell began to visit the monasteries in person by virtue of his authority as Vicar-general. What his plan was when he began his visitation is nowhere hinted at; perhaps it was still not yet worked out in his own mind. Chapuys heard a report in September that the King intended to allow the religious of all orders to be free to leave their habits

¹ *Letters and Papers*, VIII, 73, 76, January 1535.

² *Ibid.*, VIII, 475, Cromwell's Remembrances.

³ Lord Herbert, *Henry VIII*, 424-425.

⁴ This we learn from a letter of Richard Layton to Cromwell, dated June 4, 1535, asking that he and Dr. Legh, be appointed visitors at the "approaching visitation." *Letters and Papers*, VIII, 822.

and marry. If, however, they wished to remain in their houses they must live in poverty since Henry VIII intended to take the rest of their revenue.⁵ The plan is somewhat similar to the one suggested in the previous year, and differs materially from the plan finally evolved.

The task of visitation was of course too great for Cromwell alone, and he soon brought to his assistance a group of visitors; Dr. Richard Layton, Dr. Thomas Legh of "satrapike countenance," John Ap Rice, Dr. John London, John Tregonwell and Thomas Bedyll. These men armed with eighty-six articles of inquiry and twenty-five articles of injunction⁶ visited monasteries in Kent, Oxfordshire, Northamptonshire, Leicestershire, Norfolk, Nottinghamshire, Yorkshire, Cheshire, and Cumberland and in many other counties. Their articles of inquiry concerned themselves with all sorts of details of monastic life; but the information most desired was clearly the value of the monastic revenues, property, jewels and lands. The injunctions "contain the core of a stringent and salutary reformation,"⁷ but they were administered, especially by Legh, in a way to promote disobedience or surrender.

In connection with the administration of the injunctions, we find a hint of the development of the plan for dealing with the monasteries. Towards the end of September, two weeks after his letter last quoted, Chapuys came to feel that the object of the severe injunctions, one of which forbade the monks to leave the precincts of their houses was to force the monks to surrender; so that the King might seize their property without causing the people to murmur,⁸ and a letter from Legh and Ap Rice to Cromwell in November confirms Chapuys' surmise. Legh wrote in the body of the letter "they will not need to be put forth, but will make instance to be delivered and so the deed shall be imputed to themselves," and Ap Rice added in a postscript, "though it were well done that all were put out yet to avoid calumny it were well that they were dismissed upon their own

⁵ *Letters and Papers*, IX, 357, September 13, 1535.

⁶ The articles are printed in Wilkins, *Concilia* III, 786.

⁷ Fisher, *op. cit.*, 373.

⁸ *Letters and Papers*, IX, 434, a letter of Chapuys to Charles V, September 25, 1535.

suit. They will all do this, if they are compelled to observe these injunctions; and the people shall know it the better that it cometh upon their own suit that they be not straight discharged while we are here; for then the people will say that we came for no excuse except to expel them.”⁹ The regard for public opinion is interesting and important. When Cromwell drew up the injunctions, he perhaps had in mind the restoration of the monasteries to Benedictine simplicity and rigor; their surplus wealth being confiscated by the state.¹⁰ But Legh conceived the idea of using the injunctions in a way to bring complete surrender of their houses by the monks. At first, the other Commissioners protested to Cromwell against Legh’s severity and strictness,¹¹ and Cromwell ordered him to be less rigorous.¹² But he explained in answer, how Cromwell might “advantage” himself in gratifying those houses that appealed to him for release from the strictness of the injunctions,¹³ and Cromwell was satisfied; for nothing further is said on the matter. Shortly afterward, the other Commissioners, especially Ap Rice who had made the chief complaint against Legh’s severity, were administering the injunctions as zealously as Legh himself. During the next months many monasteries appealed to Cromwell for leave to be free from the galling injunctions, always to Cromwell’s own great profit of course; while other houses, too poor or too obstinate to purchase temporary reprieve in this way, were compelled to struggle along until from very weariness they were ready to surrender themselves to the King, even before the act of suppression had passed through Parliament.

Besides making their inquisitions and giving their injunctions, the visitors endeavored to get possession of the monastic jewels and ornaments. Thus Layton wrote, “I have crosses of silver and gold, some of which I send you not now because I have more that shall be delivered me this night by the Prior of Maiden Bradley himself. Tomorrow, early in the morning I

⁹ *Ibid.*, IX, 708, a letter of Legh and Ap Rice to Cromwell.

¹⁰ This was partly the plan in 1534, and is the plan indicated by Chapuys in his letter of the middle of September.

¹¹ *Letters and Papers*, IX, 139, a letter of Ap Rice to Cromwell.

¹² *Ibid.*, IX, 265, a letter of Legh to Cromwell.

¹³ *Ibid.*, IX, 265.

shall bring you the rest when I have received all, and, perchance I shall find something here" (at St. Augustine's Bristol).¹⁴

The commissioners or visitors finished their visitation near the end of February, 1536, having covered the last part of their tour, including the diocese of Coventry and Lichfield and the entire province of York in about six weeks. Really very rapid traveling. But hurry was necessary since Parliament had reassembled on February 4, 1536. Its only business of importance was to legalize the surrenders of monastic houses into the king's hands which had already been made at various times since the preceding November,¹⁵ and to deal with the question of the monasteries as the king and Cromwell wished. Since the letters of Chapuys and Legh and Ap Rice in September and November 1535, there had been no indication, so far as the existing records show, of the development of the government's plan of procedure against the religious houses. Cromwell was perhaps not quite sure as to how much he could safely take; and it was not until March 3, that a rumor of his intentions appeared when it was "bruited (in London) that abbeys and priories under 300 Marks by year and having not twelve in convent shall down."¹⁶ Unfortunately, all the records of the Parliament of February, 1536, are lacking; but from various scraps of letters and tradition, it is clear that the king presented the bill for the dissolution of the smaller monasteries having a clear yearly income of under £200, to the Commons in person on March 11, stating that on Wednesday next he would be there to hear their minds.¹⁷ From the preamble of the act of disso-

¹⁴ Wright, *The Suppression of the Monasteries*, (Camden Society), 59, August 24, 1535. The jewels were taken by the visitors probably from the fear that the monasteries suspecting dissolution would sell their jewels and ornaments and thus cheat the crown. In March of the next year Cromwell received a report that the prior and four or five monks of St. Swithin's Winchester were taking their jewels and selling them to a London jeweller who had been in divers religious houses for the purpose (*Letters and Papers*, X, 472, March 14, 1536, Thomas Parry to Cromwell) and the same thing may have been done earlier.

¹⁵ For a list of surrenders between November, 1535, and February, 1536, see *Letters and Papers*, IX, 816.

¹⁶ *Letters and Papers*, X, 406, a letter of Sir Richard Whetthyll to Lord Lisle, March 3, 1536.

¹⁷ Gairdner, *Lollardy and the Reformation in England*, II, 80; Wright, *Suppression*, 38, 39, a letter to Thomas, Earl of Dorset.

lution and from a sermon preached many years later, by Bishop Latimer,¹⁸ it seems that the enormities and crimes of the monks brought to light by the visitors, were stated to the house, in order to arouse the members against the monasteries; but even with this, it was March 18th before Chapuys wrote of the passage of the act.¹⁹ The preamble of the act speaks of a great deliberation, before the Lords and Commons were finally resolved, and Sir Henry Spelman records the tradition that "when the bill had stuck long in the lower house and could get no passage, he (the King) commanded the Commons to attend him in the forenoon in his gallery, where he let them wait till late in the afternoon, and then coming out of his Chamber, walking a turn or two among them and looking angrily at them, first on one side and then on the other, at last, 'I hear' (saith he) 'that my bill will not pass; but I will have it pass, or I will have some of your heads,' and without other rhetoric or persuasion returned to his Chamber. Enough was said, the bill passed, and all was given him as he desired."²⁰ With this brief outline of the events leading up to the passing of the act for the dissolution of the smaller monasteries in mind, it will be possible to examine the causes of the dissolution.

The official cause of the dissolution may be gathered very well from Henry VIII's own words. "As to the suppression of religious houses . . . none was suppressed but where most abominable living was used as appears by their own confessions signed with their own hands in the time of our visitations."²¹ In 1539 an "Official Account of the Reformation" appeared in England, which put the matter more fully. After the King had taken the title of Supreme Head, he caused visitations to be made and finding the lives of the monks and friars, especially in small houses, to be vicious, all houses under £200 a year were suppressed and the revenues annexed to the crown.²² And in the *Pilgrim* this cause is still more fully elaborated. The King

¹⁸ Latimer, *Sermons*, (Parker Society), 123; cp. 117-122.

¹⁹ *Letters and Papers*, X, 494, a letter of Chapuys to Charles V, March 18, 1536.

²⁰ H. Spelman, *History of Sacrilege*, (Ed. of 1853), 206.

²¹ *Letters and Papers*, XI, 780 (2), a letter of Henry VIII to the Duke of Suffolk, October 19, 1536.

²² *Ibid.*, XIV, part I, 402.

was aroused by the falsehoods of the monks and "for the better discovering of these hypocrites, (he) sent forth Commissioners into all the provinces of his realm, to examine particularly the manner of living that these ribalds used. Now came the matter fully to light . . . hypocrisies, murders, idolatries, miracles, sodomies, adulteries, fornications, pride and not seven, but more than seven hundred thousand deadly sins." The King at once called Parliament and Parliament resolved that these monasteries should be extirpated and the goods and revenues disposed of.²³

There can be no question that the monastic life had sunk to a low standard, and that in many places, drastic reform was greatly needed. This is clear from the accounts of the visitation of Archbishop Warham of the monasteries in his diocese in 1511;²⁴ of the visitations of the diocese of Norwich²⁵ and those of Southwell Cathedral.²⁶ Some years earlier, in 1489, Archbishop Morton wrote to the Abbot of St. Albans, specifically accusing "him and his monks of 'defiling the very Church of God by infamous intercourse with nuns.' He names the very men and the very women, and tells how the monks 'live with harlots and mistresses publicly and continuously within the precincts of the monastery and without.'"²⁷ At the same time, care should be taken in accepting the reports of Cromwell's visitors as true to fact in every case. The characters of Layton and Legh and the great rapidity with which the investigation was made make it extremely possible that an honest investigation was not made. The tone of the reports of Layton and Legh, and of Ap Rice and London who accompanied them is not sustained by the reports of John Tregonwell and Thomas Bedyll, two other

²³ The *Pilgrim*, by William Thomas, clerk of the Council to Edward VI. Edited by J. A. Froude, London, 1861, pp. 43-45.

²⁴ Mary Bateson, *Archbishop Warham's Visitation of Monasteries*, E. H. R., VI (1891), 18-25.

²⁵ *Visitations of the Diocese of Norwich, A. D. 1492 to 1532*, Ed. by Rev. A. Jessop, D. D., (Camden Society).

²⁶ *Reports of the Historical Mss. Commission*, Report XII, App. part 9, visitations of Southwell Cathedral in the years 1481 to 1514.

²⁷ *Norfolk Antiquarian Miscellany*, II, 443, Editor's note by Walter Rye, quoting from Morton's letter in Morton's Register in the library at Lambeth palace.

visitors of 1535, and it is quite out of harmony with the reports of Commissioners who were sent out in the spring of 1536 to make surveys and valuations of the goods of suppressed houses.²⁸ The houses of which we have the commissioners' reports, were in most cases not the same as those visited by the visitors, but in two cases where they visited houses previously visited by Legh and Layton, they found only good conversation and living where Layton and Legh found sodomy, incontinence and desire to be released from the monastic vows.²⁹ At Folkstone, to give another illustration, Layton declared the house to be in utter decay, the prior's monk maximus sodomita, and the prior an apostate and runagate. The commissioners sent to suppress the house found the place in good repair and the prior a good husband, beloved by his neighbors.³⁰

After all, the government had little primary concern about the true condition of life in the monasteries, bad as it actually was, but it did want a lurid picture of monastic living, such as Layton and Legh supplied, with which to inflame popular opinion against the monks. For though the secular clergy were disliked, the monasteries still held a very popular place in public opinion, due probably to their charities. Dr. Savine has shown in his *English Monasteries on the Eve of Dissolution* that the monastic alms, imposed upon them by legal obligations, amounted to less than two and one-half per cent of the gross income of the monasteries, and it is his impression that the voluntary alms did not exceed this amount. Probably, as he points out, the monks did very little by their alms to relieve the acute distress of their time, they did not perform any great economic service;³¹ but it is certain that the people thought that they were doing a great deal for their welfare, and that is the important consideration in studying the reason for the popularity of the monasteries. This feeling is reflected in the reports of the com-

²⁸ *Letters and Papers*, X, 857, 858, 916, 917, 980, 1166, 1191, reports and letters of the commissioners of 1536.

²⁹ The houses were Garendon and Grace Dieu in Leicestershire. The commissioner's report is in *Letters and Papers*, X, 1191; Layton and Legh's report on the same houses, *ibid.*, X, 364.

³⁰ *Letters and Papers*, IX, 669, 829.

³¹ Alexander Savine, *English Monasteries on the Eve of the Dissolution*, 239, 241, 265.

missioners appointed to take the suppression of the houses in 1536. They were generally local gentlemen and represented local sentiment. The commissioners of suppression in Northamptonshire wrote to Cromwell that the nunnery of Catesby was a great relief to the poor and that by his alms the abbot of St. James, in Northampton, relieved three or four score folks in town and country round about daily.³² The prior of Pentneye, other commissioners wrote, relieved the quarter wondrously where he dwelt, and it seemed a pity not to spare a house that fed so many indigent poor.³³ Lord Audeley the Lord Chancellor himself moved Cromwell to spare St. John's monastery at Colchester, because many poor people of the town depended upon it for relief.³⁴ Finally, Aske, the leader of the Pilgrimage of Grace, in his examination at London after he was taken into custody, declared he grudged against the statute of suppression and so did all the country in the North in the first place, because the abbeys in the North gave great alms to poor men.³⁵ The monastic alms possessed for the neighboring poor a very real value, which even the Lord Chancellor saw. At a distance of four centuries, we are inclined perhaps to minimize the benefits conferred, in the mind of the recipient at least, by a very small aid.

Another form of monastic charity of greater economic service than the alms was that vague and undefined thing known as "hospitality." This meant intermittent entertainment to travellers and merchants, especially in the wilder and more inaccessible parts of the country. On this ground Edward, Archbishop of York, begged that the monastery of Hexham be spared. "Wise men who know the Borders think the lands even if they were ten times the value would not countervail the damage that would ensue if it were suppressed. Some way there is never a house between Scotland and the lordship of Hexham and what comfort the monastery is, especially during war, is well known."³⁶ Aske also drew attention to the economic service

³² *Letters and Papers*, X, 858, 916, 917.

³³ *Ibid.*, X, 563.

³⁴ *Ibid.*, XIII, part II, 306.

³⁵ *Letters and Papers*, XII, part I, 901, page 405.

³⁶ *Letters and Papers*, X, 716.

of the monasteries in the North. "Strangers and baggers of corn as betwixt Yorkshire, Lancashire, Kendal, Westmoreland, and the Bishopric was in their carriage of corn and merchandise greatly succoured both horse and man by the said abbeyes; for none was in those parts denied neither horse-meat nor man's meat, so that the people was greatly refreshed by the said abbeyes where now they have no such succour."³⁷ The North was less advanced economically than the other parts of England, and there the monasteries still performed a real economic function by furnishing accommodation to travellers and merchants, and making business and trade easier. But in the other parts of England, monastic hospitality no longer needed to be depended on, and the sentimental hold of the monasteries on the people could be destroyed by reports of evil living in them. It is interesting to note that just in the North, where the monasteries still did the realest service, and where public opinion would be hardest to influence, the reports of the visitors were filthiest and foulest. That the reports of the visitors were but a means to the suppression, and not at all the cause, appears further in a letter of Henry VIII when he was urging the King of Scotland to suppress the monasteries there. "The extirpation of monks and friars requires politic handling. First, the Governor should send commissioners as it were to take order for living more honestly . . . with a secret commission to groundly examine all the religious of the conversation and living, thereby if it be well handled the governor shall learn all their abominations." This and other things arranged, "the suppression of them will be easy."³⁸

A second cause assigned for the suppression of the monasteries is that the monks were the chief supporters of the papal authority, and that to succeed in asserting the royal supremacy over the church, it was necessary to break their power.³⁹ It is true that this cause is always stated in conjunction with other causes, but it is always placed as the first cause and far too

³⁷ *Letters and Papers*, XII, Part I, 901, page 405.

³⁸ *Letters and Papers*, XVIII, part I, 364, a letter from Henry VIII to Ralph Sadler, his ambassador in Scotland.

³⁹ See *inter alia*, Lord Herbert, *Henry VIII*, 424, 425; Gasquet, *Henry VIII and the English Monasteries*, 75; J. Gairdner, *Lollardy and the Reformation*, 45.

much emphasis is laid upon it. The main evidence for the statement that the monks were the chief supporters of the papacy and weakened the control of the crown is the story of the Friars Observant and the Carthusian monks, and their opposition to the royal supremacy in the church. The Friars Observant had preached against the king's marriage to Anne Boleyn, and now, in the spring of 1534, they refused to take the oath to the royal supremacy, as required by the act of succession of 1534. Before August 29, 1534, they had been turned out of all their seven houses in England and distributed in several monasteries where they were virtually prisoners.⁴⁰ Their houses were given to the Austin friars. The monks of the London Charterhouse also refused to take the oath. On account of their influence, very great efforts were made to induce them to yield and finally, on June 6, all the members of the London house subscribed the oath under conditions. In the early part of 1535 when the new title of Supreme Head was incorporated into the royal style by a decree of the privy council, the heads of three of the English Charterhouses, and the head of the Briggittine monastery of Sion resisted. Early in May, 1535, these four, with John Hale, vicar of Isleworth, were publicly executed in London, and a few weeks later three more Carthusians were burned. For two years after this no further arrests among these monks were made, though great pressure was placed upon them to submit. It was not until May, 1537, that the monks who still refused to submit were imprisoned, and not until June 10, 1537, that the surrender of the London Charterhouse was taken. The story of the suffering and fortitude of these heroic martyrs for conscience sake, is very moving, but it does not show that the monks in general resisted the succession and the royal supremacy, and it does not show that the king suppressed the monasteries because they did resist. It is true that the Friars Observant were taken out of their houses; but their houses were not taken by the king, but given to another order of friars. The Carthusians and the inmates of Sion on the other hand were not even turned out, and their houses continued to stand until as late as 1537 and 1538. If the king suppressed the monasteries because of the opposition of the

⁴⁰ *Letters and Papers*, VII, 1057, 1095; Wriothesley, *Chronicle*, 25.

monks to the royal supremacy, why were not the London Charterhouse and the monastery of Sion, the great centers of opposition, suppressed at once? The punishment for the small number of monks and friars who are known to have resisted the royal supremacy was imprisonment and death, not the suppression of all religious houses into the hands of the king.

An important part of the argument for this cause of the dissolution is the assumption that the opposition of the London Charterhouse, and the other Carthusians, the inmates of Sion and the Friars Observant is typical of general opposition among the monks to the royal supremacy and the succession. There is no positive evidence of this. So great an authority as Canon Dixon believes that "the oath was taken in almost every chapter house where it was tendered."⁴¹ Again, nowhere in the Remembrances of Cromwell, nor in other memoranda which relate to the suppression of the monasteries, is there, so far as I have found, the slightest hint of the opposition of the monks to the royal supremacy and succession as the cause for the dissolution. Finally a comparison of dates still further weakens the case for this cause of the dissolution. The first rumors of the suppression of the monasteries were in the air in 1531, and the confiscation of all church endowments including the wealth of the monasteries was under consideration in 1533, a year before the Observants and the Carthusians opposed the oath required by the king.

While the opposition of the monks to the royal supremacy and the succession cannot be taken as a very potent cause of the suppression, it is true that Henry VIII, who was very anxious, when once he separated from Rome, that the work be not undone, saw very clearly that the dissolution of the monastic houses made a breach with Rome which was almost irreparable. When he was endeavoring to win other sovereigns from the Papacy in order that he might not stand alone without allies among the great rulers of Europe, he tried to effect the breach between them and Rome by urging them to plunder the church. Thus when Henry VIII tried to win France from the church in 1535, he tried to persuade Francis I to increase his

⁴¹ R. W. Dixon, *History of the Church of England*, I, 213. The whole matter of monastic opposition to royal supremacy is here discussed.

revenues at the expense of the Church,⁴² and Sadler sent to Scotland in 1540 to detach James from Rome in order to close Scotland to catholic fugitives from England, was instructed to urge on James, the dissolution of the Scotch monasteries.⁴³

The chief cause for the dissolution was a financial one. This is already suggested by the circumstances and events in England previous to the dissolution already sketched. There are further indications of the same thing. In the bill drawn up in November, 1534, for the confiscation of all the church estates, the cause given and repeated several times is "the increase and augmentation" of the king's revenue, "for the maintenance of the King's estate," defence against invasion, enterprises against the Irish and the Scotch, and the making of Dover haven. A secondary motive is "the taking away the excess which is the great cause of the abuses in the church," but not a word is said of the opposition of the monks to the royal supremacy and the succession. Again, the great emphasis placed upon finding the true values of the goods and property of all the houses in the articles of inquiry of the visitors in 1535 and the fact that after the act for the dissolution of the smaller monasteries, many houses coming under the terms of the act, which could pay liberally enough purchased exemption from suppression, strengthens the feeling that the financial motive was uppermost. When Sadler went to Scotland in 1540, he was instructed to say that it was bruited in certain quarters that James V gathered into his hands "numbers of sheep and such other vile and mean things in respect of his estate," "therewith to advance his revenue." Henry thought this undignified and suggested "that James, seeing the untruth and beastly living of the monks who occupy a great part of his realm should rather increase his revenue by taking such houses as may best be spared and convert the rest to better uses as Henry himself had done. Thus he might easily establish his estate so as to live like a king and yet not meddle with sheep and mean things."⁴⁴ Is it not

⁴² *Letters and Papers*, VIII, 537, a letter of the Bishop of Faenza to Mons. Ambrosio.

⁴³ *Letters and Papers*, XV, 136, instructions of Henry VIII to Sadler, ambassador to Scotland.

⁴⁴ *Letters and Papers*, XV, 136.

possible that Henry VIII reveals the motives on which he himself acted?

Finally in Ireland no attempt was made to conceal the purely financial reason for the dissolution of the monastic houses. Conditions in England and Ireland were quite different, but in each country there was a shortage in funds to meet the expenses of the government. Owing to the disorders and rebellions in Ireland, the subsidies granted by the Irish Parliament, were collected in only a small part of the country, and the customs were remitted to the towns.⁴⁵ The revenues had fallen so low, and the need of money was so great that there was fear that the King's army would break up for want of money, or even mutiny.⁴⁶ Henry VIII having spent £40,000 to repress the Geraldines, was anxious for a "revenue to repress such attempts" in the future, to stop the drain on the royal treasury.⁴⁷ In June, 1536, as a result of such conditions the Irish Parliament passed bills to increase the revenues, granting to Henry VIII the first fruits of benefices, the twentieth part of the yearly income of the clergy and a subsidy, and with these, the suppression of the abbeys.⁴⁸ In the face of the disordered condition of the country, the suppressions could not be carried through immediately. But in 1538, when the wages of 300 soldiers in the garrison were increased, the Irish commissioners were authorized to suppress abbeys to the yearly value of 2,000 marks, and also to suppress abbeys in Kilkenny, Tipperary, Wexford, and Waterford and assign the revenue for the administration of justice there.⁴⁹ The circumstances attending the suppression of the abbeys in Ireland and the use to which the money was put indicate clearly that it was a financial measure. The dissolution of the English monastic houses was analagous.

The act for the dissolution of the smaller monasteries⁵⁰ gave into the hands of the king, the lands and goods of all monastic houses with a clear yearly value of less than £200, on the ground

⁴⁵ *Letters and Papers*, XI, 521, notes given by Brabazon, Under-Treasurer in Ireland to Wm. Body, to be declared to Cromwell.

⁴⁶ *Letters and Papers*, X, 267; XI, 351.

⁴⁷ *Letters and Papers*, X, 1051, Cromwell's Remembrances.

⁴⁸ *Letters and Papers*, X, 897, 1030, June, 1536.

⁴⁹ *Letters and Papers*, XIII, part I, 641, March, 1538.

⁵⁰ *Statutes*, 27, Henry VIII, c. 28.

that "manifest sin, vicious, carnal and abominable living is daily used and committed commonly," "whereby the governors of such religious houses and their convent spoil, destroy, consume and utterly waste" their goods, property and ornaments of their churches. In the preamble of the act, it is interesting to note, it is in houses of less than twelve members that vicious, carnal and abominable living is found; but in the enacting clause the possession of a yearly income of less than £200 is made the proof of vice. The reports of the visitors give absolutely no reason to distinguish between houses, either on account of their wealth or numbers — they are as bad for the large and rich houses as for the smaller and poorer ones. The pretense that the king was chiefly actuated by a desire to reform the evil life of the monks is kept up in the clauses which direct that the inmates of the smaller monasteries are to be sent to live, for their reformation, at the "great solemn monasteries, wherein (thanks be to God) religion is right well kept and observed." If, however, any monk wished to leave his habit, he was to be provided with a pension. Furthermore, though "his highness may lawfully give, grant and dispose them (the monastic properties) or any of them, at his will and pleasure to the honor of God and the wealth of his realm," the new possessor was bound to provide hospitality and service for the poor, in like manner as the houses had previously done. By such meaningless clauses did the king and Cromwell make the act less obnoxious.

In 1535 there were 372 monasteries and priories in England which had an income of less than £200,⁵¹ besides 27 in Wales.⁵² To administer the lands and properties of the monasteries, Parliament provided for the establishment of a new revenue court of record, called the Court of the Augmentations of the Revenues of the King's Crown. Its accounts begin April 24, 1536.⁵³ On this same day commissions were issued to commissioners to take the surrenders of the monastic houses coming within the terms of the act of suppression.⁵⁴ They visited the house

⁵¹ Savine, *op. cit.*, App. 270-288. The list here given is worked out from the returns of the commissioners of the Tenth of 1535, found in the Valor Ecclesiasticus.

⁵² *Letters and Papers*, X, 1238.

⁵³ *Letters and Papers*, XIII, part II, 457.

⁵⁴ *Letters and Papers*, X, 721.

to be suppressed and made a careful survey of the value of all goods and property, often enhancing slightly the values found by the commissioners of 1535, who had assessed the values of all church property in 1535 for the payment of the annual tenth. It was on the basis of this new and higher valuation, by the way, that all leases and sales of monastic lands were made by the crown.⁵⁵ The survey completed, an inventory was made of all the goods of the monastery, the plate and furniture, live stock, grain and provisions on hand, and debts owing to the house. The lead was stripped from the roof and cast into sows, and the bells were taken from the church tower to be kept to the king's use and sold later. The movables, furniture, crops and stock were sold "at days" and the money used to pay the debts of the house. The jewels and ornaments and plate were sent to the jewel house in London and the house and grounds given over to a royal farmer or to the king's beneficiary. The monks in the house who desired to remain in their profession were sent to other houses, while those who desired to go into the world were sent to Cranmer or to the Lord Chancellor for capacities. The head of the house was sent to the Court of Augmentations for his pension.⁵⁶

The suppression of the religious houses once begun, it is hard to see how the process could have stopped with the smaller houses. Yet the dissolution of the larger houses was probably hastened by the Pilgrimage of Grace in 1536 and the beginning of the peace between France and the Empire in 1537 which showed the desirability of even greater revenues. To increase further the endowment of the crown, the remaining religious houses were attacked. The part taken by the abbots of Brid-

⁵⁵ *Letters and Papers*, part I, 530.

⁵⁶ *Letters and Papers*, V, 721, 1191; XI, 165, 274, 347; XIII, part I, 764, 776; XIII, part II, 168; XIV, part I, 1190. At first all walls of churches, steeples etc. were pulled to the ground, leaving only houses necessary for a farmer (*Letters and Papers*, XI, 242). But it was soon found that the walls were very thick and there were few to buy materials, to "help the charges of pocking down of them." To follow the commission, wrote John Freeman, would cost the king at least £1,000 in Lincolnshire (*Letters and Papers*, XI, 242). In June, 1539, the order was changed. The commissioners were to make inventories of all superfluous buildings, but pluck down nothing unless commanded by the King or the Chancellor of the Augmentations.

lington, Jervaulx and other northern monasteries in aiding the Pilgrims of Grace in the fall of 1536, at once laid them open to the charge of treason; and in the early part of 1537 the charges were investigated, the abbots condemned and hanged, and the houses confiscated into the king's hand, because of their abbots' attainder.⁵⁷ At the same time, in April, 1537, the beginning of the surrender of other larger houses into the king's hand was effected. The surrender of Furness Abby, with £900 a year in rents was much desired; and on the king's personal instructions the Earl of Sussex closely examined the monks. When "nothing much" could be found against them, Sussex, "according, having considered if one way would not serve, by what other means the monks might be rid from the said abbey," assayed the abbot of himself, and found him "very facile."⁵⁸ A few days later, Sussex received a letter of thanks from the king, for his "prudent proceedings in the conducing of the house of Furness to the king's hand."⁵⁹ In June, 1537, the London Charterhouse submitted itself to the king's mercy,⁶⁰ and other large houses did so before the end of the year.⁶¹ In December, 1537, Cromwell took the question up in earnest and noted in his Remembrances the sending of Dr. Petre, Dr. Lee and Dr. Leighton, with Sir Thomas Straunge on a new visitation.⁶² This they began early in January, 1538, and during the next two years they, with John Tregonwell, John Freeman, Robert Southwell, John Gostwick and others were busied taking the voluntary surrenders of the larger houses.

It is of considerable interest to note in passing how consistently the delicious farce that the monks were surrendering their houses voluntarily was played, in deference to public opinion, and especially from fear that if it became known that the larger houses were being dissolved, they would squander and waste their goods.⁶³ As soon as Layton, the king's commissioner ar-

⁵⁷ *Letters and Papers*, XII, part I, 127, 130, 490, 491, 590, 666, 1172.

⁵⁸ *Ibid.*, 840.

⁵⁹ *Ibid.*, 896.

⁶⁰ *Letters and Papers*, XII, part II, 27.

⁶¹ *Ibid.*, 1119, 1274.

⁶² *Ibid.*, 1151.

⁶³ The alienation of their property by the monasteries in view of a probable suppression was extensive in 1538 and 1539. See *Letters and*

rived, it was bruited in Cambridge that he was on a tour of suppression, and that the king was determined to suppress all the monasteries. "To stop this bruit" he wrote to Cromwell "I went to the Abbeyes and priories, and calling to me all honest men dwelling near, openly in the chapter houses, charged the abbots and priors that they should not, for any such vain babbling of the people, waste, sell, grant or alienate any of their property; I said that babblers slandered their natural sovereign, and if they were knaves that did so report, I commanded the abbots and priors to put such in the stocks, and if gentlemen, to certify your Lordship and the Council of their reports. This digression has hindered us at Westacre, but if I had not sped it before the dissolution of the same, the abbots and priors would have made foul shift before we could have finished at Westacre. Your command to me in your gallery in that behalf was more weighty than I then judged."⁶⁴ The king himself promised that if the monks used themselves as faithful subjects he would not in anywise interrupt their mode of living; and when this did not quiet the rumors, Cromwell declared in what seems to be a circular letter, addressed to various abbots, "that unless overtures had been made by the houses that have resigned, he (the king) would never have received them. He does not in any way intend to trouble you, or devise for the suppression of any religious house that standeth, except they shall desire it themselves with one consent, or else misuse themselves contrary to their allegiance."⁶⁵ Finally, when the whole business was nearly over, and Parliament passed the statute 31 Henry VIII, c. 13, (which is often referred to because of its incorrect title as the act for the suppression of the larger abbeyes, but which is really an act intended to confirm legally the king's possession of such monastic lands as had already or should in the future come to him) the preamble was made to tell how the abbots and priors and convents had surrendered their property "of their own free will and voluntary minds and assents, without constraint, coaction or compulsion of any manner, person or persons."

Papers, XIII, part II, 528; *Letters and Papers*, XIV, part I, 946, 1094, 1539.

⁶⁴ *Letters and Papers*, XIII, part I, 102, a letter of Layton to Cromwell.

⁶⁵ *Letters and Papers*, XIII, part I, 573.

The method which the king's commissioners used to obtain these voluntary surrenders, without constraint, coercion or compulsion, was to examine the abbot and monks of a house, perhaps accuse them of divers crimes, enormities, and even high treason, and then exhort them to surrender their property to the king's mercy. The monks, sometimes abjectly admitting the "enormities of their past living," "or stricken with sorrow" in most cases gladly subscribed the instrument of their surrender, sealed it with their seals and delivered it to the commissioners.⁶⁶ At the same time the monks were often considerably influenced in their action by the promise of the commissioners that the debts resting on their houses should be paid, and that they should have pensions, and in some cases, solemn covenants were drawn up between the monks and the commissioners to this end.⁶⁷ Lest the activities of the commissioners should be insufficient, a subtle kind of pressure was exerted directly from London by Cromwell himself in the form of requests, which the abbots and convents scarcely dared ignore, for grants to Cromwell's favorites of lands and manors which were essential to their continued existence as monastic houses.⁶⁸

Occasionally, as at St. Oswald's, where the prior was in bed unable to move hand or foot, at Godstow, Vale Royal, Ambresbury and Henton, the commissioners met with a determination not to surrender that "which is not ours to give but dedicate to God," except on the king's own command.⁶⁹ Later it was admitted that all houses except a few which were to be converted into collegiate churches were to be dissolved. The commissioners were instructed to give life pensions to the inmates of every house where the surrender was freely made. In other cases they were to take possession of the house and lands "by force of the last Act for the alteration of ecclesiastical tenures."⁷⁰

⁶⁶ Examples are given in *Letters and Papers*, XIII, part I, 42, 396, 956, 1340.

⁶⁷ *Letters and Papers*, XIII, part I, 405, 1073; XVI, part I, 349; *Reports of the Historical Mss. Commission, Report XIV, App. part IX*, 271.

⁶⁸ *Letters and Papers*, XIII, part I, 478, 797, 912; part II, 100; XIV, part I, 205.

⁶⁹ *Letters and Papers*, XIII, part I, 409; part II, 314, 758; XIV, part I, 145, 269, 629.

⁷⁰ This refers to the *Statute 31 Henry VIII*, c. 13, which had no such force as is here implied.

Obstinate monks should have no pensions nor stuff, but should be committed to ward for future punishment.⁷¹ Yet with all this, it required the judicial murder of the Abbots of Reading, Glastonbury and Colchester before opposition was broken down.⁷² Even then the great houses of Christchurch, Canterbury and of Rochester held out until March 3, 1540, when a commission for their forcible dissolution was issued.⁷³

During the same years in which Cromwell's commissioners most actively took surrenders of monastic houses, 1538 and 1539, the Bishop of Dover with several assistants was busy taking the surrenders of the friaries. They seem to have been very poor, because "the devotion of the people is clear gone," and they could not live on "the cold and small charity in these days." Many of the houses had already sold all their plate and implements, and were eager to surrender before their poverty compelled them to sell the stones, slate and lead of their houses,⁷⁴ though the Grey Friars so far resisted dissolution as to begin the collection of a fund for the purchase of the confirmation of their privileges from the king.⁷⁵ If the Bishop of Dover can be trusted, the crown profited but little by the surrender of the friaries; the houses were scarcely sufficient in value to pay the debts and to dispatch the poor men.⁷⁶

Other commissioners were also busy during this period razing the great shrines of England. Two years previously, in 1536, Chapuys had noticed the desire of the crown to abolish the festivals of saints and images, in order to spoil their shrines,⁷⁷ and at that time a draft for an act of Parliament against pilgrimages and superstitious relics had been drawn up.⁷⁸ In February and March, 1538, "Pilgrimage saints" began to go down apace, and beginning in September the great shrines of Canterbury, Winchester and Chichester were taken down and conveyed to

⁷¹ *Letters and Papers*, XIV, part I, 1189.

⁷² *Letters and Papers*, XIV, part II, 399, 427. Cromwell himself ordered and planned the details of their execution.

⁷³ *Letters and Papers*, XV, 378.

⁷⁴ *Letters and Papers*, XIII, part II, 32, 554; XVI, part I, 101.

⁷⁵ *Letters and Papers*, XIII, part II, 934.

⁷⁶ *Letters and Papers*, XIV, part I, 661.

⁷⁷ *Letters and Papers*, X, 601.

⁷⁸ *Letters and Papers*, X, 246.

London. The shrine of St. Thomas at Canterbury was esteemed one of the wealthiest in the world; the author of the *Pilgrim* says of it rather rhetorically "In the space of more than 250 years, I think, there have been few kings or princes of Christendom that did not either bring or send some of their richest jewels thither . . . (It was) so preciously adorned with gold and stone that at midnight you might in some manner have discovered all things as well as at noon day."⁷⁹ Winchester shrine was a disappointment to the spoilers. "There was no gold nor ring nor true stone in it, but all great counterfeits;" the silver alone however, was worth 2,000 marks, and in addition, there was a great cross of emeralds, with other ornaments.⁸⁰ At Chichester there were 55 images of silver gilt, 57 pieces of gold and silver work, and 3 caskets of jewels.⁸¹

Thus by the close of 1539 the great resumption was practically accomplished. In the story of the suppression of the monasteries, friaries and shrines, as it has developed, the financial causes of the movement stand out most clearly. Behind and beneath all, however, were the great changes in thought and the reawakening of spiritual forces which characterized the Reformation. Henry VIII and Cromwell may not have been deeply and genuinely affected by them; but it was only because they had come into being, and by playing upon them, that Henry VIII and Cromwell succeeded in carrying through their undertakings.

⁷⁹ *The Pilgrim*, 33-34.

⁸⁰ *Letters and Papers*, XIII, part II, 401.

⁸¹ *Ibid.*, 1049.

CHAPTER XI

THE REVENUES AND THEIR YIELD, AFTER THE INCREASES MADE BY CROMWELL

English antiquarians have paid considerable attention to the question of the value of the monastic property at the time when the dissolution began. The best figures give a net yearly value of £135,000¹. These figures have however, little value for the purpose of this essay. Henry VII's income from the monasteries consisted not only in the rents of their lands but in the value of their goods and buildings which he confiscated and sold and in the money received from the sale of their lands. Moreover, he never had all the monastic lands in his hands at any one time, for much of the property and lands of the first monasteries to be suppressed had been alienated before the houses dissolved later came to the king's hands. The value of the monasteries to Henry VIII can only be found by a study of the records of the court of Augmentations, where all their revenues were received. Further the concentration on the effort to find the king's profits from the dissolution has drawn attention from Cromwell's total increases in the revenues, of which the dissolution was only a part. Besides the monastic revenues there were the First Fruits and Tenths and the new clerical subsidies. Finally, owing to the change in the value of money and commodities, any absolute sums which may be named are almost meaningless. It is only when such sums are compared with the older income of the government that the relative importance of the dissolution of the monasteries, the annexation of the first fruits and tenths to the crown, and the clerical subsidies appears.

Before 1540 the entire income at the Exchequer was generally

¹ *Cott. Mss., Cleopatra E. IV*, 446-456. For a discussion of the pre-dissolution value of the English monasteries, see Savine, *Valor Ecclesiasticus*, 77-79.

less than £40,000 a year, and after a change in the Household and Wardrobe assignments in that year it dropped to £30,000 a year and less. These sums were derived from the *firma comitatatus*, such land revenues as were assigned to the Household and Wardrobe (before 1540), the fee farms of cities, the farm of the ulnage, the moiety of forfeited merchandise, and especially the customs. The wool customs at Calais and such customs assigned for the keeping of Berwick were not however, paid at the Exchequer.

The clear yearly value of the crown lands in the survey of the court of General Surveyors was £38,080 in 1542, and in addition to this there was paid and accounted in this court several thousand pounds each year of the profits of the Hanaper of Chancery, and several hundred pounds yearly of the returns of the butlerage.² The net annual revenue of the Duchy of Lancaster was about £13,000.³ The wards' lands in the court of wards yielded £4,673 clear in 1534, and £12,346 clear in 1546.⁴ If an average may be taken from these, the only available figures, there would be £8,500 a year from wards' lands. On the basis of these figures, the normal ordinary, recurring income of the crown from pre-Cromwellian sources, especially the customs and rents of crown lands, and other revenues based on land, excluding the extraordinary revenues like parliamentary taxes, and excluding the revenues collected and expended locally at Calais, Berwick and in Ireland, was about £100,000 a year.

With the new revenues came great increases. During the first five years in which the First Fruits and Tenths were received by the crown, they yielded an annual average of £16,000; but from 1540 on, the yield fell to £9,700 a year owing to the suppression of the larger monasteries.⁵ Cromwell himself was concerned about "the decay of first fruits by suppression of the monasteries;"⁶ but it was impossible to have it both ways. The

² *Add. Mss.*, 32,469. No accounts of the General Surveyors' court for many years previous to 1542 have been found; but as the income of this court was not a fluctuating or increasing one, £38,000 probably represents the average income for the decade before 1542.

³ *Duchy of Lancaster, Accounts Various*, bundle 24.

⁴ *Court of Wards, Misc. Books*, 361, 362.

⁵ See Appendix, *Court of First Fruits and Tenths*.

⁶ *Letters and Papers*, XIII, part I, 187.

annual tenth granted by the clergy averaged £29,400 a year from 1535 to 1538 inclusive; but after the suppression of the larger monasteries it was reduced to £18,400.⁷ These revenues were received by the treasurer of First Fruits and Tenths. To him Cromwell also turned over in 1535 more than £130,000, probably money received from the clergy for their fine for praemunire, and from other sources. The treasurer of First Fruits and Tenths likewise received the new clerical subsidies. Although the annual tenth granted by the clergy and confirmed by Parliament in 1534 was intended to take the place of the occasional dismes or tenths voted by the convocations in earlier times, the government soon called upon the clergy for special subsidies. Such grants were made in 1540 when a subsidy of four shillings in the pound of the value of all benefices after the annual tenth had been deducted, was granted, payable in two years;⁸ in 1542 when a similar grant of six shillings payable in three years was made,⁹ and in 1545 when six shillings, payable in two years was granted.¹⁰ The clerical subsidy due in 1540 was estimated at more than £24,000; accounts of the years from 1542 to 1544 show that more than £18,000 a year was received from the clerical subsidies in these years; and probably a like amount was received in every year from 1540 to the end of the reign. All in all, the Treasurer of First Fruits and Tenths, including the £130,000 turned over to him by Cromwell, received an average of £52,200 for every year between 1535 and 1546, with an additional sum of more than £18,000 for every year from 1540 on, from the clerical subsidies.

In the study of the income from the dissolved monasteries, a distinction must be made between rents and issues of the lands, which were true revenues, and the money derived from the sale of land, which was in essence the alienation of capital for pressing emergencies. The net receipts of the Court of Augmentations in Henry VIII's reign were:

August 24 1536 to Michaelmas 1538 £ 71,616¹¹

⁷ See Appendix, *Court of First Fruits and Tenths*.

⁸ *Statutes*, 32 Henry VII, c. 23.

⁹ *Statutes*, 34-35, Henry VIII, c. 28.

¹⁰ *Statutes*, 37 Henry VIII, c. 24.

¹¹ *Letters and Papers*, XIII, part II, 457.

Michaelmas	1538	to	Michaelmas	1539	108,028 ¹²
"	1539	to	"	1543	465,684 ¹³
"	1543	to	"	1544	253,312 ¹⁴
"	1544	to	"	1545	200,511
"	1545	to	"	1546	139,152
"	1546	to	"	1547	66,186 ¹⁵

In addition to these sums, the gold and silver plate and jewels seized at the shrines in the monastic churches and elsewhere, and delivered into the Jewel House of the King were valued at £79,471.¹⁶ The average net receipts from monastic sources were thus about £130,000 a year from 1536 to the end of the reign. Of this amount however, only £61,300 a year, derived from the rents of land together with small sums from the sale of goods, plate and bells, may be considered true normal recurring revenues. The balance, an annual average of £82,300 was derived from the sale of land and represents the alienation of capital funds.

From these figures, it appears that the net normal income of the crown had been more than doubled by Cromwell. Large parts of the additions which he made, were however, at once required for the business of the king and state. Work on the royal palaces and at Dover and Calais went forward with increased vigor.¹⁷ After 1538 a remarkable increase in the expenditures in the royal household began. The expenditures there rose from less than £25,000 a year in 1538-1539 to £45,700 a year in

¹² *Letters and Papers*, XIV, part II, 236.

¹³ *Letters and Papers*, XVIII, part II, 231.

¹⁴ *Letters and Papers*, XIX, part II, 328.

¹⁵ *Augmentations Office, Treasurer's roll of Accounts*, 3.

¹⁶ *Account of Monastic Treasures confiscated by Sir John Williams, late Master and Treasurer of the Jewels*. Published by the Abbotsford club, Edinburgh, 1886.

¹⁷ *Declared Accounts, Pipe Office*, no. 3199, Account of Robert Lord, paymaster of the king's works, showing the expenditure of £59,490 10s. 6d. at Hampton, Nonesuche Oatlande, Mortlake Syon, Oking, Windsor Hanworth and Asshere (1536 to 1539). For general repairs the Treasurer of the Chamber paid £100 a month on a warrant dormant; and the Court of Augmentations paid considerable sums for building at Westminster (*Letters and Papers*, XIII, part II, 457). For works at Dover, see *Letters and Papers*, XI, 1254; XII, part I, 92; XIII, part II, 223; works at Calais, *Letters and Papers*, XIII, part II, 381, 842.

1545-1546.¹⁸ The suppression of the Pilgrimage of Grace in 1536 cost probably £50,000. Coming at a time when the new revenues were not yet all in hand, the revolt was particularly ill-timed for the government, and much ado was made to get the necessary funds to pay the king's soldiers.¹⁹

In Ireland, though the rebellion of the Geraldines was technically subdued, much money continued to be needed; and during the four years after 1536 the king complained constantly that revenue was being consumed to no purpose.²⁰ The Irish revenues were increased by the suppression of all the monastic houses in 1538 and 1539 and by other means, from a gross average of £4,812 a year between Michaelmas 1534 and Michaelmas 1537²¹ to over £8,000 a year from 1542 to 1547,²² and the net amount annually available to pay the Irish army rose from £1,823²³ in 1534-1537 to £3,285 between 1541 and 1547.²⁴ But these sums continued to be insufficient to pay the entire expenses of the army and repeated appeals were made by the deputy and council in Ireland to the king and to Cromwell for money, for lack of which the army at times became mutinous and was in danger of breaking up.²⁵ With the new revolt in 1540, even greater sums had to be sent from England, Henry and the council having decided to exhaust great treasure to bring the inhabitants to civility and obedience, and so "redubbe" the great charges already made, and turn the island into a source of profit as conquered countries should be.²⁶ Despite the recent

¹⁸ *Exchequer, Lord Treasurer's Remembrancer, Wardrobe Enrolled Accounts*, roll 8, membranes 43-47 inc.

¹⁹ For accounts of the various treasurers with the king's commanders, see *Letters and Papers*, XI, 930, 950, 1093. See also *Letters and Papers*, XIII, part II, 457; XI, 624, 724; *Rot. Reg.*, 7c XVI, 73/104; *Letters and Papers*, XI, 769, 788, 800; *Declared Accounts, Pipe Office*, no. 2074; *Letters and Papers*, XI, 823, 1124, 1152, 1220.

²⁰ *Letters and Papers*, X, 105; XI, 1149; *Carew Mss.*, no. 98.

²¹ *Letters and Papers*, XII, part II, 1310, accounts of Brabazon, the under treasurer.

²² *R. O. Ireland, Folios*, V, no. 4. The revenues in 1544 reached to £10,124; in 1545 and 1546 they fell to £8,500, but rose to £12,056 in 1547.

²³ *Letters and Papers*, XII, part II, 1310.

²⁴ *Ireland, Folios*, V, nos. 3, 4.

²⁵ *Irish Calendar*, III, 47; *Letters and Papers*, XI, 267, 351; XVI, 42, 43, 70, 1119; XVII, 665, 688; XX, part II, 562.

²⁶ *Letters and Papers*, XVI, 1194, 1284. Between Michaelmas 1540 and

great additions to the revenues, complaints of shortages in the various revenue offices are found as early as the spring of 1537, with a state of embarrassment, almost chronic, during 1537 and 1538. "The Treasury of the Chamber is often without money. The Jewel House, Augmentations, and First Fruits is as ill, and the Chequer is worse."²⁷ Cromwell chose to pretend that the stringency was genuine; and attributed it to the expenses of the suppression of the Pilgrimage of Grace, the continued costs of the suppression of disorders in Ireland, the works at Calais, Guisnes and Dover and the maintenance of garrisons at Berwick and Carlisle.²⁸ A study of the accounts of the various revenue departments shows that this condition was only apparent. The total expenditures of the government for all purposes were at least £60,000 less than the royal income, and though the various treasurers may often have been without ready money, as contemporary letters assert, the king himself had large supplies. For he drew upon all the treasurers constantly for their surplus funds, and stored them up in his own coffers. The Treasurer of First Fruits and Tenths delivered £59,139 to the king between January 1, 1535 and Christmas 1540;²⁹ the Exchequer delivered £15,533 6s. 8d. between Michaelmas 1535 and Michaelmas 1539;³⁰ and the Treasurer of the Chamber contributed something; but since his account books for these years are only fragmentary, no total sum can be given. The Court of Augmentations paid £45,731 4s. 8d. directly to the king's coffers between the date of the establishment of the court in April 1536 and March 1540³¹

Michaelmas 1547 Henry VIII sent £46,835 to Ireland, which added to the surplus of the Irish revenues for these years made up £65,894 paid to the army in Ireland during this period (*Ireland, Folios*, V, no. 3).

²⁷ *Letters and Papers*, XIII, part II, 434, a letter of John Husee to Lord Lisle. See also *ibid.*, XII, part I, 116; XII, part II, 69, 90, 274; XIII, part II, 222.

²⁸ *Letters and Papers*, XIV, part I, 869, a memorial drawn up by one of Cromwell's clerks, and corrected by Cromwell himself April-June, 1539. The same reasons are urged in the draft preamble for an act for subsidy in 1540 (*Ibid.*, XV, 502.).

²⁹ *Landsdowne, Mss.*, 124 f. 137.

³⁰ *Exchequer, King's Remembrancer, Misc. Books*, 69; *Exchequer of Receipt Declarations of State of Treasury*, 17, 18, 19.

³¹ *Letters and Papers*, XIII, part II, 457; XIV, part II, 236, Accounts of the court of Augmentations.

and £73,538 13s. 4d. between March 1540 and April 1541.³² The subsidy and the fifteenth and tenth, granted in 1534, and collected in 1535, 1536 and 1537, yielding in all at least £77,000, likewise found their way to the king's coffer in all probability, since there is no record of their use in any of the revenue courts.³³ Not only were the royal revenues now sufficient for all the purposes of the government, but a new surplus was rapidly being gathered. Before long however, the international political situation became so portentous, that more rapid progress in the accumulation of treasure was believed to be necessary and desirable. The royal purpose to achieve this were masked behind a plea of the king's great expenses and the inadequacy of his supplies.

³² *Ibid.*, XVI, 745.

³³ Edmund Denny, the keeper of the king's palace at Westminster had charge of these surplus funds at least from 1541 onward. His account, extending into the reign of Edward VI is found in the British Museum, *Lansdowne Rolls*, No. 14. His functions were somewhat analagous to those of John Heron in Henry VII's reign, but he did not become a new permanent treasurer.

CHAPTER XII

THE WAR WITH FRANCE AND SCOTLAND, 1542-1547

By Henry VIII's own statement, he feared no one so long as there was not perfect accord between the Emperor and the Most Christian king.¹ For as long as these two catholic sovereigns were at odds, no effect could be given to any papal bull of privation. But once at peace, they might unite to carry out the provisions of such a bull which was actually promulgated in Rome, December 18, 1537, and divide England between them. While Francis I may have entertained such a thought,² it is certain that Charles V never did, because of his multitudinous other activities. Yet Henry VIII thoroughly believed in the possibility of a combined attack upon his throne, and his foreign policy during the last decade of his reign was a long series of attempts to keep his rivals hostile towards each other, and one of them friendly to himself.

The beginning of the new period in Henry VIII's foreign policy came in July, 1537, when a truce of ten months was concluded between France and Flanders. The cordiality between Francis I and the Emperor thus begun, ripened, despite Henry's efforts to the contrary, into the treaty of 1539 by which both Francis and Charles bound themselves to make no new alliances, agreements or accords with the king of England without mutual consent.³ The direct result of this treaty, and the growing

¹ *Letters and Papers*, XX, part I, 1197, a letter of Chapuys to Charles V.

² In 1539 Francis I went so far as to tell the imperial ambassador in France that he was willing to let the bull of privation be published and obey it, if the Emperor would do the same, and suggested that the island might be conquered by three armies and divided (*Letters and Papers*, XIV, part I, 115, Latino Juvenale to Charles V).

³ *Letters and Papers*, XIV, part I, 62. During 1538 English diplomatists had endeavored to make either Charles or Francis more favorably disposed

hostility which was being shown to Henry VIII in France,⁴ was a series of negotiations between Henry VIII and possible allies — the princes of northern Germany, the Duke of Urbino and Christian III of Denmark. There were also great preparations to put the country into a state of defence against invasion. Bulwarks and blockhouses were built on all parts of the coast from Berwick south; men and money were sent to Calais and Guisnes; musters were ordered and not less than ninety ships of war equipped and made ready.

Though nothing came of the rumors of war in 1539, the irritation between France and England was increased by friction over a disputed passage and fort at Calais, and by renewed references to the pensions, so long unpaid.⁵ Though amity continued between France and England throughout 1540 and 1541, relations became more and more strained, especially because Francis not only did not pay the pensions, but made "no honorable offer of satisfaction," while in the affair at Calais, he "showed a desire to pick a quarrel with England."⁶

On the other hand, relations with the Empire were constantly improving. Katherine's death in 1536 had removed the chief source of discord between Charles V and Henry VIII, while the growing hostility between France and England made greater friendship with the Emperor desirable. In 1541 a ten months' truce was arranged between Henry and the Emperor, that toward Henry than toward each other. The Emperor was offered a strict alliance; it seems to have been suggested to Francis that here was an opportunity to do away entirely with the pensions which had not been paid since 1534. *Ibid.*, XIII, part II, 914, 915, 1087, 1163.

⁴ Throughout France, Henry VIII was reviled as a heretic. At a meeting of the Council of State the Cardinal of Paris reproached him as a tyrant for his latest judicial murders; while Henry's new bibles printed in Paris were sequestered by the University of Paris. See *Letters and Papers*, XIV, part I, 37, 92, 371.

⁵ There were rumors in France in the summer of 1539 that Henry VIII had asked Parliament to help him recover his pensions in France (*Letters and Papers*, XIV, part I, 1230). When the French protested against the construction of their bridge at Calais, Henry VIII asserted "we have suffered great unkindness at their hands as the nonpayment of our pension, to which they were bound by oath" (*Letters and Papers*, XVI, 174).

⁶ *Letters and Papers*, XVI, 851, a report of Marillac's, of a conversation with the Duke of Norfolk held with him in May, 1541.

neither should treat anything to the other's disadvantage, and Henry even proposed a treaty of closer amity.⁷

When war again threatened between France and the Empire, over the murder of two French ambassadors, Fregoso and Rincon, Henry VIII was in negotiations with both Charles V and Francis I, each of whom was suddenly made willing for a close English alliance. The negotiations with France turned on the French pensions, and the unpaid arrears since 1534. Francis at first impugned their validity; but finally consented to acknowledge his obligation for 600,000 crowns of arrears and accept its acquittance as a dowry with the Princess Mary, provided that Henry would commute the future annual payments due during the course of Henry's life to 40,000 crowns, and give this to Mary as part of her dowry as well. In exchange for these releases, Francis would assign lands to Mary worth one million crowns a year. The perpetual pension claimed by Henry by the treaty of 1527 was to be left as it was, and Henry's successors might dispute as to its validity. But as Henry VIII's greatest concession was the remission of 300,000 crowns of the arrears negotiations were broken off.⁸

Henry VIII's rejection of the French terms was probably hastened by the development of his Scottish policy. Of late years Henry VIII and his nephew James V had not been friends. James V harbored adherents of the old religion who escaped from the north of England; he had refused to follow Henry VIII's example by breaking with the Pope. His country might be an open way for the entrance of Papal legates into England to preach revolt, and it added one more to the number of countries which might join in an attempt to carry out the Papal Bull. War between England and Scotland broke out in 1542, with an unprovoked border raid led by Sir Robert Bowes on August 24, 1542. On his way home he was ambushed at Haddon Rig. Henry was furious. Negotiations with Scotland which had been proceeding were broken off by the king's order "until at notable exploit had been done upon the Scots toward expurgung the national dishonor done the realm by the reports

⁷ *Letters and Papers*, XVI, 910, 1291.

⁸ *Letters and Papers*, XVI, 1351; XVII, 164, 167, 185, 208, 270, 286; instructions of Francis I to Marillac, and dispatches of Marillac.

of the Scots, that Bowes and his men had fled before an inferior force of Scots.”⁹ France of course aided her old ally. The French refused to renew their negotiations over the pensions, with the sacrifice of Scotland. When the ship which carried Cardinal Beaton to Scotland was captured by the English, the French ambassador in London was so passionate in demanding its restoration, and became “so wilful, so proud and so glorious” that Henry asked his recall.¹⁰ A few days later, Henry signed a treaty of alliance with Charles V,¹¹ and in the summer of 1543, Henry actively entered the war with France by the dispatch of a small force under Sir John Wallop to serve with the imperial army in Flanders. In 1544 the great invasion of France, led by the king in person, was begun.

The war with France and Scotland cost in all £2,134,784 1s. 0d. between the time of the first alarms and the end of Henry VIII's reign.¹² An anticipation of the great charges of war as it would now have to be waged was given by the costs of the new works at Calais and of the blockhouses which had been erected along the English coast in 1539,¹³ while the little border raid into Scotland of 1542 cost £60,129.¹⁴ As early as 1539, Cromwell seems to have been conscious that the new war, when it came, would pale expenditures in all previous wars. At the existing rate of accumulation the royal treasure would be inade-

⁹ *Letters and Papers*, XVII, 925.

¹⁰ *Letters and Papers*, XVIII, part I, 63, 91, 92.

¹¹ *Letters and Papers*, XVIII, part I, 144, February 11, 1543.

¹² The expenditures were made up:-

The siege of Boulogne	£586,718 12s. 3d.
The keeping of Boulogne	426,306 19s. 5d.
Fortifications and extra garrisons at Calais and Guisnes	270,765 9s. 6d.
War against Scotland including fortifications and garrisons on the border and at Berwick	350,243 2s. 2d.
Charges of the navy	265,024 4s. 3d.
The expedition in aid of the Emperor in 1543, under Sir John Wallop	26,500 0s. 0d.
Fortifications and blockhouses within England from March 1, 1539 onward	203,205 12s. 11d.

State Papers, Edward VI, (Record Office), XV, no. 11.

¹³ In the preliminary period 1539-1542 these had cost at least £74,000.

¹⁴ *Declared Accounts, Pipe Office*, no. 212.

quate to finance it. He felt it advisable not to meet the extraordinary expenditures for that year, for the new fortifications, from the existing revenues, since such a procedure would be a potential drain on the surplus. It was moreover, desirable to build up the surplus more rapidly by finding new supplies of ready money. This seems to be the explanation of the "device" which Cromwell drew up at this time for the fortification of the realm, according to which every man was to contribute according to his "behavior," and the names of all wealthy men were to be collected. Although Cromwell took care to appoint Richard Morison to defend his plan for a subsidy in the House of Commons,¹⁵ and Norfolk explained the king's necessity in the House of Lords, the session was prorogued before a grant was made.¹⁶

It was however, soon demonstrated there was a ready market and a great demand for land, and that money could be raised in vast sums quickly and easily by selling the monastic estates. Cromwell had not confiscated the monasteries to alienate their lands in lavish grants or by sale. During the three years following the dissolution of the smaller monasteries, from April 1536 to March 1539, the alienations of crown lands were comparatively small. Estates valued at £11,633 a year, only one-eighth of the entire confiscated domain were alienated during this period, by way of sale at small prices, or as free gifts, chiefly to men in the service of the crown, like Pope, Sadler,

¹⁵ Morrison drew up a draft of his speech in Parliament reciting the king's need. Of late his Majesty's charges had been wonderfully great. Less would serve him, but for his tender love which he bore his subjects which daily enforced him to new charges. Especially costly had been the commotion in the North. Now the whole country was in jeopardy. Much money was being spent in the repair of the fortresses and much treasure had been bestowed on Calais, Guisnes and Dover, on the rebels in Ireland and the garrisons at Berwick and Carlisle. "Let us," he suggested "lay up our sweet lips for three or four months (which Cromwell in revising the draft altered to "years") giving the overplus of our accustomed monthly charges to the present necessity of the commonwealth. It will be better spent than in belly cheer." (*Letters and Papers*, XIV, part I, 869).

¹⁶ Norfolk himself, on the plea that shortness of time prevented a grant at this session moved the prorogation to another time "at which each would make satisfaction to his majesty for his expenses and labors as far as he could." (*Lord's Journal*, I, 111).

Wriothesley, Seymour, Gostwick, and Cromwell whose aid alone had enabled Henry VIII to carry through the changes of the past years.¹⁷ In March, 1539, a new policy was adopted of selling monastic lands to any purchaser at the good price of "twenty years purchase," that is for twenty times the annual rental. In the year ending at Michaelmas 1539, £80,622 were received from the sale of lands.¹⁸ To expedite matters, in December, 1539, Cromwell and Sir Richard Riche were given a general commission to sell lands up to a clear yearly rental value of £6,000, for ready money, at twenty years purchase. Throughout the remainder of the reign great extents of monastic lands were sold each year, at first to provide additional funds toward the surplus, and then to meet the costs of war directly. Before Henry VIII's death two-thirds of the monastic domain had been alienated,¹⁹ with the return of £799,310 to the crown in sale money.²⁰ This was one of the largest sources of income in the course of the war. The alienation of so much land, however, really defeated the object of the sequestration of the monastic properties, in order to provide for the temporary exigencies.

In the opening months of 1540 Cromwell returned to the task of finding new funds against future contingencies, with

¹⁷ The value of lands alienated between April 1, 1536, and March 1, 1539, is constructed from the patents of grants, in the *Letters and Papers*. The sum of £46,000 in money, together with certain lands in exchange was received by the crown, from the grantees. The character of the grantees as servants of the crown appears from a tabulation of all grantees between April, 1536, and March, 1539, constructed from a study of the patents of the grants.

¹⁸ *Letters and Papers*, XIV, part II, 236, accounts of the Court of Augmentations.

¹⁹ Fisher, *Political history of England 1485-1547*, Appendix, table of total alienations, worked out by Dr. Savine.

²⁰	April	1536	to	Michaelmas	1538	£ 29,847
	Michaelmas	1538	to	Michaelmas	1539	80,621
	"	1539	to	"	1540	91,986
	"	1540	to	"	1541	30,438
	"	1541	to	"	1542	36,122
	"	1542	to	"	1543	105,322
	"	1543	to	"	1544	164,495
	"	1544	to	"	1545	165,459
	"	1545	to	"	1546	72,826
	"	1546	to	"	1547	12,284

renewed vigor. The Parliament of 1540 assembled April 12. Ten days later on the seventh day of the session, the first revenue bill of the session, was read in the House of Lords, "for the reduction of the possessions of the Hospitalers of St. John in England into the king's hand."²¹ The houses of the knights of St. John had not been touched during the confiscation of the monasteries; but a quarrel in 1540 between an English knight, Sir Clement West and the Grand Master of the order, and West's imprisonment at Malta for appealing to Henry VIII in the matter, gave Henry an excuse to act.²² The bill met with no opposition, and passed both houses by May 10.²³ Just three days previously, the prior of the order in England died, and the king at once took over his house in London worth £3,385 a year.²⁴ The priory at North Allerton surrendered soon after; but the house at Bristol continued to stand until March, 1544.²⁵

On May 8, the second revenue bill of the session was passed, granting a subsidy to be paid in two years, and four fifteenths and tenths, payable in four years.²⁶ Still later, the third revenue bill was passed, confirming the action taken by the clergy in their convocations, legalizing their "spontaneous offer" of four shillings in the pound of their income payable in two years, in addition to the annual tenth.²⁷

In these years of preparation against the future war, there was also a kind of recrudescence of the measures by which Henry VII had enriched himself at the expense of his nobility. In 1540 Cromwell was attainted of treason, and his property and goods assured to the crown.²⁸ In 1541, Lord Leonard Grey,

²¹ *Lords' Journal*, I, 132.

²² *Letters and Papers*, XV, 490, 491, 522, 523, 531, 532.

²³ *Lords' Journal*, I, 136; *Statutes*, 32 Henry VIII, c. 24.

²⁴ The figure is given in Stowe's *Survey of London*, (Ed. by Kingsford), II, 84. *Letters and Papers*, XV, 646.

²⁵ *Letters and Papers*, XIX, part I, 157.

²⁶ *Statutes*, 32 Henry VIII, c. 50.

²⁷ The convocation of York made the grant in consideration of their deliverance from the yoke of Rome, and the king's excessive charges upon havens, blockhouses and fortresses (*Letters and Papers*, XVI, 64). For the grant of Canterbury see Wilkins, III, 850. The enabling act is *Statutes*, 32 Henry VIII, c. 51.

²⁸ Though these included £7,000 in money and as much more in plate, crosses and chalices, they were not of such value as people thought;

the Countess of Salisbury, Sir John Neville the leader of the abortive revolt in Yorkshire, with 60 of his followers, Lord Daere of the South with 5,000 ducats a year, and a Mr. Mantell with 12,000 ducats a year, as Chapuys remarked with a sly dig at the real reason for their fate, were executed on various charges and their lands added to the royal estates.²⁹ Lord Daere's lands were found to be entailed, and the king's justices and learned council agreed that they ought not to be forfeited, but that the king should have the wardship of the heir and the custody of the lands until he became of age, because part of the lands were held *in capite*. But the king thought that the will of Lord Daere's grandfather "should not be so perfect" but that he might confiscate that part of Daere's lands held in fee and still have wardship of the rest and have the entail avoid all escheats.³⁰ At the close of the year, when the misdemeanors of Queen Katherine Howard brought more worthy people to their end, the council showed an indecent haste and eagerness — to say the least — to seize their goods. They feared, for instance, that as the Duchess of Norfolk was old and testy she might take her commital so hard as to endanger her life. And so it was better to indict her and the others at once, "whereby Parliament shall have better ground to confiscate their goods if any of them should die before the attainder."³¹

The collection of the lay subsidy and of the fifteenths and tenths in February, 1541, and February, 1542, had netted £153,500;³² very large sums were received from the land sales and the clerical subsidies. But "to furnish the treasure requisite in the event of war," in March, 1542, it was determined to practice a benevolent loan. Renewed emphasis was put upon the king's expenditures for the fortifications of the realm and the great amount needed to complete them. True a subsidy had just been collected, but this was much less than the king's charges. The although too much for a "*compaignon de telle estoffe*," according to a letter from Marillac, the French ambassador in London to Montmorency, June 23, 1540 (*Letters and Papers*, XV, 804).

²⁹ *Letters and Papers*, XVI, 954.

³⁰ *Letters and Papers*, XVI, 978, 1019.

³¹ *Letters and Papers*, XVI, 1433. For other instances of the same spirit see *Letters and Papers*, XVI, 1422, 1437.

³² *Exchequer, Lord Treasurer's Remembrancer, Subsidy Rolls*, 43, 44.

commissioners were even to admit that the king had considerable treasure, but considering the daily preparation made by the Emperor and France, "and the motions threatened by the Turks," they were to disclose the "unwisdom" of drawing upon that at this time, lest "he might be disfurnished against any sudden event by outward parts or otherwise."³³ Both Chapuys and Marillac wondered greatly about the purpose of the new levy, "considering the great accumulations of money he has from the spoils of the abbeys, the confiscation of the goods of so many lords for treason, the long time he has been exempt from war and the imposition of the above mentioned tax" (the subsidy of 1540).³⁴ Neither of these ambassadors with all their experience saw so clearly the probable costs of the next war as did Henry and his council.

The success of the subsidies in the past two years and of the loan of 1542 led Henry to resort to them again in 1543. Parliament granted a lay subsidy and confirmed a clerical subsidy without any opposition.³⁵ The lending of 40,000 ducats to the Emperor in the summer of the year was used as a reason for asking for a new loan, under the name of Devotion money, from the people. The king gave orders at this time that for six weeks all curates preach and exhort contributions to aid against the Turks, in place of what used to be given for bulls and indulgencies. Chapuys wrote to his master that it was expected that three or four times 40,000 ducats would be raised. If there was any such hope, it was disappointed, for the entire collection of the "Devotion money" was only £1,903 8s. 3d.³⁶

As the plans for the invasion of France in the summer of 1544 with 42,000 men were maturing, Wriothesley and Paget, members of the council, assumed the chief burden of responsibility for finances. They took careful survey of the situation at the beginning of the year. They estimated that the campaign in France would cost £250,000. There was immediately

³³ *Letters and Papers*, XVII, 194.

³⁴ *Letters and Papers*, XVII, 235, 338, Marillac to Francis I, *Ibid.*, 280, Chapuys to Granvelle.

³⁵ *Lords' Journal*, I, 213, 215.

³⁶ *Exchequer, Lord Treasurer's Remembrancer, Miscellaneous Rolls*, 2/23. See also *Letters and Papers*, XVIII, part I, 955; XVIII, part II, 315.

available from the revenues without considering the money in the king's chests or the loan of 1542 in Mr. Pekham's hands, but including £50,000 which could be borrowed in Flanders, £134,000. The sum lacking, £116,000, they hoped to raise by various extraordinary means, so as not to have to draw on the surplus. The sale of land, the sale of lead from the monastic houses or the pledge of lead for loans, levies on English and foreign merchants and on those in the king's fee, the profits of the mint and of the issues of debts due the crown were suggested by Wriothesley as satisfactory for his purposes.³⁷

On March 1, 1544 to take the first plan for bringing in more money, a commission was issued to William Paulett, Wriothesley, Riche and Robert Southwell to sell the king's lands and the lead from the roofs of the conventual houses which had been lying in storage since the dissolution of the monasteries, and to conclude with subjects for fines and "incomes" for leases, for manumission of bondmen and for the sale of wards.³⁸ The number of sales was expected to be so large, that power was granted to sign patents with the king's stamp. In April, Sir Anthony St. Leger received a commission to sell and lease the royal possessions in Ireland,³⁹ in order to relieve pressure for money from that quarter; and in July, Wriothesley and others were commissioned to sign grants of land to citizens of London who had advanced certain money to the king on condition that the king might redeem the lands within one year.⁴⁰ The old acts of Henry VII that all who had grants of land from the king or who held any crown office or annuity must attend the king in person on his military expeditions were again enforced; but persons desiring to compound for such attendance were

³⁷ *Letters and Papers*, XIX, part I, 272, a memorandum of finances drawn up by Wriothesley in 1544.

³⁸ *Letters and Papers*, XIX, part I, 278 (4), (5), (67). The commission began "For the accomplishment of this enterprise (of a war against France) it is expedient to prepare a mass of money by sale of the king's possessions because he will not at present molest his loving subjects for money unless thereto caoeted." This commission was resumed in June and re-issued in a slightly different form to Sir John Baker and others (*Letters and Papers*, XIX, part I, 812 [77]).

³⁹ *Letters and Papers*, XIX, part I, 443 (7).

⁴⁰ *Letters and Papers*, XIX, part I, 1035 (87).

enabled to do so.⁴¹ All these opportunities were taken advantage of by the English people. Before Michaelmas, 1544, £5,776 had been received at the court of Augmentations as composition for exemption from attending the king, and £22,616 from the sale of mortgages to the citizens of London, while £164,495 was realized from the sale of lands from Michaelmas, 1543, to Michaelmas, 1544.⁴²

But the sale of lands and privileges were not alone relied upon. Like governments of modern times, the English government resorted to loans from the rich bankers and merchants in Flanders and Germany. Stephen Vaughan was the English agent in Antwerp for negotiating these loans, and he succeeded in borrowing 210,000 crowns in 1544. Though the sum was small compared with the costs of the war during the year, it was more than a year's revenue at the beginning of Henry VII's reign. It was used to provide for merely incidental expenses, like the wages of German mercenaries whom Henry VIII had hired and from whom he received practically no service, and the purchase of ordnance, gunpowder and grain.⁴³

The third means taken to raise money in 1544 was the debasement of the currency. Color of justification was sought in the excuse that the debasement of the coinage in Flanders and France caused money to be carried out of England notwithstanding the king's command to the officers of the ports to enforce the statutes against this, so that the only remedy appeared to be the enhancing of the value of silver and gold within the realm.⁴⁴ This cause had probably been the valid ground for earlier changes in the value of gold and silver by Henry VIII, even as late as the alterations in the coinage of 1542. The great sums of money needed by the king at this time however, together with two papers in Wriothesley's hand, counting upon the mint for a large portion of the money estimated to be needed for the

⁴¹ *Letters and Papers*, XIX, part I, 1035 (86).

⁴² *Letters and Papers*, XIX, part II, 328, accounts of the court of Augmentations. In the next year £165,460 was received from land sales, and in the year ending Michaelmas 1546, £72,826. Augmentations Office, *Treasurer's Roll of Accounts*, no. 3.

⁴³ The loans in Flanders are treated separately, in Chapter XIII.

⁴⁴ *Letters and Papers*, XIX, part I, 513, the proclamation of debasement, May 6, 1544.

year, and calculating the king's gain by the debasement, leave no doubt about the real reason for the step.⁴⁵ The mint was reorganized, with Edmund Pekham already well known in connection with the loan of 1542, as High Treasurer of the Mint. From this time forward for many years the profits of the mint arising from the coinage of debased money became the great "shot anchor" of the government, furnishing it with even more money than did the sale of monastic lands.⁴⁶

The campaign of 1544 belied Wriothesley's greatest expectations. It cost not £250,000, but nearer £650,000. It consumed not only the new extraordinary funds and the revenues counted upon as available early in the year, but it seems to have drained the surplus as well. As the fall of 1544 came on, the king was clearly ill-furnished with funds. When money was sent to the army in the North in October, 1544, Shrewsbury the king's lieutenant was requested to use all the husbandry he might.⁴⁷ At this same time, Richard Riche, treasurer of the armies in France, was compelled to borrow money in order to pay his soldiers the wages due them. According to his letters, for lack of money "the poor soldiers do here die daily at Calais of the plague and also of weakness for lack of victual."

Since the king was determined to keep Boulogne, the financial ministers, Wriothesley and Paget were compelled to turn their hands to raising for the year 1545 enough money to meet the entire costs of the year's campaign, without help from reserve funds. But this was supposed to be an easy task, since the expenditures of the year would be light. With a blind optimism Paget estimated in November, 1544, that the war during the first six months of the new year would take £90,000, to be expended chiefly at Calais, Guisnes and Boulogne. The subsidy would yield £100,000, less £40,000 "for the debt" (in Flanders). There would therefore be lacking £64,000 (sic), which must be provided. A benevolence was much surer and quicker than a new Parliamentary grant — and a benevolence would not only provide the shortage of the first six months of 1545, but would leave a balance of £50,000 available for the charges of the

⁴⁵ Wriothesley's papers are found in *Letters and Papers*, XIX, part I, 272 (2), 513 (5).

⁴⁶ The debasement is studied separately in detail in chapter XIII.

⁴⁷ *Letters and Papers*, XIX, part II, 510.

second half of the year.⁴⁸ What Paget did not foresee or calculate on was that Boulogne would cost the country not £6,000, but £13,000 a month; that the Scotch would inflict a severe defeat upon Sir Ralph Eure in February, 1545, which would make it necessary to send a great expeditionary force to Scotland under Hertford in September, to desolate their country and to strike terror into their souls; or that France having made peace with the Empire, would plan to invade England in the spring of 1545, and that to face this invasion England would have to make ready the greatest fleet which had ever sailed under the flag and three armies of 60,000 men.⁴⁹

All these causes necessitated the expenditure of £560,000 between Michaelmas, 1544, and September 8, 1545.⁵⁰ To meet these very great payments crown lands were thrown upon the market in even larger quantities than before. Stephen Vaughan borrowed £128,929 Flemish from the Fuggers and Italian merchants. A little more alloy and a little less gold and silver were put into the coins. The practice was developed of borrowing from the mint. Merchants came with their bullion to have it coined; for the coined money they were obliged to wait three and four months; meantime it was being used by the government. The mint was indeed "our holy anchor." Despite Pekham's protests that no more be borrowed until all that had previously been borrowed be repaid, and despite the councillors' fears that if the news should come out that men's coming hither be thus employed, it would make them withdraw their resort, the loans from the mint were continued until they had reached 100,000 marks.⁵¹ Part of the subsidy due in February, 1546, was collected by anticipation.⁵² The confiscation of the service silver in the parish churches was even considered,⁵³ but Paget

⁴⁸ *Letters and Papers*, XIX, part II, 689, a paper in Paget's hand November, 1544.

⁴⁹ *Letters and Papers*, XX, part II, 558. The charges at Boulogne from September 27, 1544, to October 9, 1545, were £152,500 (*Letters and Papers*, XX, part I, 1078, 986, 856, 926, 958).

⁵⁰ *Letters and Papers*, XX, part II, 324, Wriothesley to Paget, in a letter commenting upon the reports of the treasurers he has just received.

⁵¹ *Letters and Papers*, XX, part II, 746, 749, 453, 729.

⁵² *Letters and Papers*, XX, part I, 675.

⁵³ *Letters and Papers*, XX, part I, 16, January, 1545. Hertford approved the plan (*Ibid.*, 1145).

stayed his hand. Finally the confiscation of the chantry wealth — logically the next of the church's accumulations to be attacked, was authorized by Parliament in November, 1545, with a frank recognition of the purpose of the measure.⁵⁴ During the year many of the chantries were taken over by the crown, even before the act was passed; but probably because they did not provide ready money most of them were left intact at the time of Henry's death.

Though vast sums were received from all these measures, money was spent more quickly than it came in; and Wriothesley and Paget more than once lost their tempers when ever new demands came to them from the Council. In September, for example, Wriothesley received a letter from the Council, noting the levying of 4,300 new men for the relief of Boulogne, desiring preparation of money for their coats and conducts. "As to money," he replied, "I trust you will consider what is done already. This year and the last, the king has spent about £1,300,000, his subsidy and benevolence ministering scant £300,000 and the lands being consumed and the plate of the realm molten and coined, I lament the danger of the time to come. There is to be repaid in Flanders as much and more than all the rest. . . . Though the king might have a greater grant than the realm could bear, it would do little to the continuance of these charges this winter, most of the subsidy being paid, the revenues received beforehand and more borrowed from the mint than will be repaid these four or five months — and yet you write me still, pay, pay, prepare for this and that."⁵⁵ And again he wrote to Paget, after examining the very discouraging reports of the various treasurers — "Now what I shall do or how I shall divide this matter that all may yet be saved upright I cannot tell. I would you felt a piece of the care and I wene you would not write so often as you do, knowing the state of things as I, by the declarations of the treasurers. You bid me run as though I could make money. I would I had that gift but one year for his Majesty's sake."⁵⁶

The situation was eased in 1546 by the very extraordinary yields of the first payment of the subsidy and of the payment

⁵⁴ *Statutes*, 37 Henry VIII, c. 4.

⁵⁵ *Letters and Papers*, XX, part II, 366, September 14, 1545.

⁵⁶ *Letters and Papers*, XX, part II, 746.

of the first fifteenth and tenth granted in 1545, which netted £135,000,⁵⁷ and by the conclusion of peace with France. On June 7, 1546, the Treaty of Camp was signed. France was to pay all pensions due to Henry VIII during his life and to his successors as it was directed by former treaties, that is 94,736 crowns a year during Henry's lifetime, and 50,000 crowns in perpetuity to his successors after his death, and 10,000 crowns a year for the commuted tribute of black salt to Henry and his successors if found to be perpetual. Within 15 days after Michaelmas, 1554, Francis I was to pay for the arrears of the pensions and for the fortifications of Boulogne built by Henry, 2,000,000 crowns; whereupon Francis should be released of the arrears of the pension due to May 1, 1546, and all charges of the war, and Boulogne should be restored to France.⁵⁸

For these worthless pensions and eight years of the possession of Boulogne, Henry had squandered his resources. He left to his son a debt of £100,000 Fl. in Flanders; an empty treasury,⁵⁹ a debased currency, depleted estates and charges vastly increased by the necessity of maintaining a post war establishment, in France and against Scotland.

⁵⁷ *Exchequer, Lord Treasurer's Remembrancer, Subsidy Rolls*, nos. 42, 43.

⁵⁸ *Letters and Papers*, XXI, part I, 1014. The treaty made further provision that a debt of 512,022 crowns 22s. 6d. upon certain letters of Francis of January 29, 1529, for money lent to him by Henry VIII was to be submitted to commissioners.

⁵⁹ The Treasurer of First Fruits and Tenths made no declaration at the end of the fiscal year 1546, because he had nothing (*Letters and Papers*, XXI, part II, 34). See also *ibid.*, 134.

CHAPTER XIII

DIRECT TAXES, LOANS AND THE DEBASEMENT OF THE COINAGE, 1542-1547

The great dependence on direct taxes and loans, and on the profits of the debasement of the coinage to meet the exigencies of the war, appears very clearly in the history of the last years of Henry VIII's reign. A more detailed examination of their nature, and the method of their use forms the topic of this chapter.

Much greater success was achieved in the use of the direct parliamentary taxes, the fifteenth and tenth, and especially the subsidy, than had been met with in earlier periods. Though they bore only a part of the total war charges, they were, considered absolutely, vastly more productive than they had been in former periods. Whereas, Henry VIII had raised £253,000 by direct taxation during his first war with France, and little more than £150,000 during his second French war, the subsidies and fifteenth and tenths voted and collected from 1540 to 1547 (both years inclusive) netted £650,000.¹

The Lancastrian and Yorkist kings, it will be recalled, attempted to supplant the fifteenth and tenth by a more flexible tax, under royal control. Their experiments were continued by Henry VII, who finally succeeded in abolishing the exemption of certain towns from taxation, in making a new assessment, in putting the assessment and collection into the charge of royal officers, and in introducing the alternate levy on either land or goods. Some progress was made towards these ends in the grant of 1497, and the precedents were firmly established in the tax of 1504. The alternate levy on either land or goods newly assessed for each grant by royal officials and

¹ See Appendix, *Subsidies*.

collected by them, with no exemption or remittances to favored towns or localities are the essence of the Tudor subsidy. The first three decades of Henry VIII's reign were a period of experimentation to find the most productive and least obnoxious and disturbing forms of the tax with such essentials. In 1512 a so-called "poll tax" was tried. A duke was levied for ten marks, a marquis, earl or countess, £4; a baron, baronet or baroness, £2, and a knight 30 shillings. Persons with freehold or other lands of the annual value of £40 or more were to pay 20 shillings; with lands worth from £20 to £40, ten shillings; with lands worth from £10 to £20, five shillings; with lands from £2 to £10, two shillings; and with lands worth under £2, 12 pence. Persons with personalty, goods, chattels and moveables paid 12 pence if their goods were worth from £2 to £10, and so in an ascending scale until they paid four marks if they had goods worth over £800. Persons paid on either their land or their goods, according to which was of the greater value, but never on both. Artificers and handicraftsmen without property, who had wages above 40 shillings a year were to pay 12 pence; if between 20 shillings and 40 shillings, six pence; and if below 20 shillings, four pence.² In 1514 a great simplification was introduced. The grant was a tax of six pence in the pound of annual value of land above 20 shillings, six pence in the pound on wages above 20 shillings or six pence in the pound on the value of moveable property above the value of 40 shillings. All natives except real beggars, above 15 years of age not coming under the other provisions of the act were to pay four pence.³ The rate was very considerably increased to something like its later extent in the act which Wolsey forced through the hostile parliament of 1523. This granted a tax of one shilling in the pound of the yearly income from lands each year for two years, and one shilling in the pound on the value of goods and moveables above £20, and six pence in the pound on such values between 40 shillings and £20, each year for two years. Workmen with wages of 20 shillings a year or with goods of 40 shillings of value, paid four pence each year for two years. In the third year

² *Statutes*, 4 Henry VIII, c. 19.

³ *Statutes*, 5 Henry VIII, c. 17.

landed gentlemen whose lands were worth £50 a year or more, were taxed an additional shilling in the pound, while in the fourth year a tax of one shilling in the pound was due from all who possessed moveables above the value of £50.⁴ The levies of the third and fourth year in this act were rather accidental, being added to it by the jealousy of the country-gentlemen toward city-members,⁵ while the tax of four pence upon all persons with more than 20 shillings a year in wages added comparatively little to the value of the grant and much to its unpopularity.

In later grants the "super taxes" of the act of 1523 were stripped off, and wide limits of exemption were created, to include eventually more than half of those who had paid under the act of 1523.⁶ But even to the end of Henry VIII's reign the form of the subsidy had not become fixed. In 1540 £20 in value of lands or goods was set as the limit of exemption; the tax was one shilling in the pound of the value of land, and six pence in the pound of the value of movables, above this limit, payable each year for two years.⁷ In 1543 the limit of exemption was only £1 in lands and goods. The tax was a graduated one; on the value of goods it ranged from four pence in the pound on values between one and five pounds, to two shillings in the pound on values over £20; on land it began at eight pence in the pound for values between one and five pounds, to three shillings in the pound on values above £20. Not only aliens, who had always done so, but guilds and corporations paid at a double rate. Payment was extended over three years; one half being due in 1544, and one quarter at each of the successive payments in 1545 and 1546.⁸ In the subsidy of 1545 one pound was the limit of exemption for land, five pounds for moveables. In this grant the land tax was two shillings in the pound payable in two years (one shilling a year in each of two years), but

⁴ *Statutes*, 14 and 15 Henry VIII, c. 16.

⁵ Hall, *Chronicles*, I, 285.

⁶ In 1524, 17,000 persons paid the tax in Suffolk, representing a very large part of all the heads of families. In 1568, only 7,700 persons paid. *Suffolk Green Books*, X, "Suffolk in 1524, being the Returns for a Subsidy granted in 1523," (Ed. by S. H. A. Hersey), page XXIV.

⁷ *Statutes*, 32 Henry VIII, c. 50.

⁸ *Statutes*, 34 and 35 Henry VIII, c. 27.

the tax on personalty was graduated from eight pence in the pound on goods worth from £5 to £10, to one shilling four pence in the pound on goods worth more than £20.⁹ It was not until Elizabeth's reign that the final form was fixed, and the subsidy became a stereotyped institution.

The subsidy of 1540 yielded £94,000; that of 1543 £183,000 and that of 1545 £196,000.¹⁰ The augmenting value of the yield of these subsidies may have been due to the wider incidence and higher rates of the later two; to the greater insistence of the crown upon its dues, which was especially emphatic as the war demands became more pressing, and to the increasing wealth of the people of the country. Besides these three subsidies six fifteenths and tenths were granted by Parliament in this period from 1540 to 1547, and netted £176,000, or a little more than £29,000 each. Fifteenths and tenths were used in conjunction with the subsidies now as earlier, and they continued in their old form without change. In most of the years from 1540 to 1547 the crown collected two parliamentary tax levies; in the year 1546, three. That it was enabled to do so means more than that the nation was committed to a foreign war, for which such taxes were justifiable measures, and that the crown had now organized its power so completely as to stamp out at their inception such revolts as had arisen in Henry VII's reign in 1489 and again in 1497 and such dissatisfaction as had greeted Wolsey's measures. The nation was stirring with life and prosperity, and taxes which would have dethroned a Yorkist could be paid without grudging, to further the personal ends of a popular king.

The subsidies and fifteenths and tenths represent but a part of the money taken from the nation in direct taxes during the war period. Despite the fact that the clergy had granted the perpetual tenths to the king in 1534, which it was supposed would take the place of the occasional tenths or dismes, voted all through the Middle Ages to the crown, new subsidies were now demanded. These took the form of the tenth part of the nine tenths of the clerical income which remained after the

⁹ *Statutes*, 37 Henry VIII, c. 25.

¹⁰ *Exchequer, Lord Treasurer's Remembrancer, Subsidy Roll*, 42. See Appendix, *Subsidies*.

perpetual tenth had been paid. They were voted by convocation, with parliamentary authority and permission, and payments were made in every year from 1540 to the end of the reign.

Taxes in reality, though not in name were the forced loans and benevolences of the war period. Henry VII observed a careful distinction between a forced loan and a benevolence; the first, he always repaid; the second was not intended to be repaid. But this distinction vanished in his son's reign, and forced loans and benevolences became nothing less than arbitrary taxes, levied by the king without parliamentary authority, sometimes made easier of collection by promises of repayment, which were repudiated by subservient parliaments in due time. Wolsey's failures in 1525, when bon-fires, reports of the destruction of the French army and the capture of the king of France, processions and "other tokens of joy" could not induce the people to pay the loan then demanded, and in 1528 when a new loan caused grave discontent among the people,¹¹ cast disrepute upon the forced loan; and no further resort was made to it until the war period at the end of Henry VIII's reign. On March 22, 1542, the keeper of the privy seal was commanded to deliver by indenture to Sir Thomas Wriothesley and Sir Ralph Sadler letters under the privy seal, in this form,— "By the king, where our Councillor A. B. has upon great and earnest considerations * * * * advanced us in prest the sum of N. sterling, we promise to repay it in two years." ¹² Sadler and Wriothesley delivered these "privy seals" which were blank royal bonds, to royal Commissioners appointed in the several shires, to be filled out by them and given to the persons who lent to the king. With the blank privy seals were sent lists of the names of persons to be approached, compiled from the subsidy books, giving the rate at which they were assessed for the subsidy.

The commissioners were to declare to the people with whom they "practiced," how the king had been at great charges in erecting and repairing castles and fortresses, both in England and at Calais and Guisnes, in making his haven at Dover, and in maintaining a great garrison in Ireland. It was not desirable

¹¹ *Letters and Papers*, IV, 3303, 3866, 4772.

¹² *Letters and Papers*, XVII, 188.

that the king should spend his own treasure, lest he be unprovided against a sudden need. For these reasons, the commissioners were to proceed, the king desired his nobles "and others who may strain themselves" to advance him money. The Commissioners were to first liberally assess themselves and then to consider the whole shire with reference to their lists of names of such as were thought meet to contribute. They might "dismiss" some, and take others at their discretion, pressing no man to contribute who had not £50 a year in lands or £100 in goods. The least rate "that can conveniently be levied of the hundred" was ten pounds on the value of lands, and ten marks on the value of goods. If any person showed himself "stiff" in condescending to the loan at this rate, upon the allegation of poverty or other pretences which seemed insufficient, the Commissioners were to use what persuasion they could, and if "all would not draw him to some reason and honest consideration of duty" they were to charge him to keep secret what had been said to him, note his name, and send him home, "and so pass him over in such a silence as he would be no impeachment or evil examples to the rest."¹³ Repayment was promised in two years, but Chapuys, the Imperial ambassador wrote that it was more likely to be at the Greek Calends, like that in Welsey's time, and none of the lenders expected their money back again.¹⁴ To give encouragement to the faint-hearted and assure them that repayment would be made, the Customs officers were ordered to abate in payment of customs dues such sums "of which they shall be advised" to those who had lent money to the king.¹⁵ But even those who were repaid in this way had little good of it, for parliament in 1543 remitted the king's obligation to repay the loan, and all those who had secured repayment were called upon to return it.¹⁶

The loan of 1542 was more productive than any single collection of any parliamentary tax had ever been, bringing

¹³ *Letters and Papers*, XVII, 194, 189, 190. See also *Historical Mss. Commission, Report XII, App. IV*, 27.

¹⁴ *Letters and Papers*, XVII, 280.

¹⁵ *Letters and Papers*, XVII, 193.

¹⁶ *Statutes*, 35 Henry VIII, c. 12; *Letters and Papers*, XXI, part I, 1084.

£112,229 into the treasury.¹⁷ It was followed by the unsuccessful scheme of the "Devotion money" in 1543, preached by the ministers in the churches as a free will offering to aid the crusade against the Turks and by a very small loan in 1544, part of which was actually repaid.¹⁸ The chaotic financial situation at the end of 1544 resolved Wriothesley to attempt a levy without promise of repayment, called the "Benevolence money." The commissioners were given their instructions in January, 1545. The great charges made last year for the siege and capture of Boulogne and the preparations now being made "have and will exhaust more money than we (the king) can sustain without the help of our subjects" and knowing by experience our people to be so loving toward us that they will gladly contribute what is necessary, as if it were granted by parliament, we forbear troubling them to repair hither; and by our council's advice require contributions by way of benevolence. The Commissioners were to make a "frank example contribution" themselves, to encourage the rest to strain themselves as the necessity of the time required; they were to urge the defence of the realm, their wives and children, and to sound the note of ingratitude if need be. Every man with lands worth 40 shillings or more a year, or with goods worth five marks was to be forced to contribute. The least rate acceptable was eight pence in the pound on lands or goods being below £20 in value, and one shilling in the pound above £20. Those who would not contribute were to be sworn to keep secret what had been said to them, and sent home, not to be an evil example to the rest.¹⁹

The king's naive assumption that this contribution, which was assessed, levied and collected with all the machinery of a regular parliamentary tax, would be gladly paid, may be a piece of royal humor. The fact is, that the royal power was now so strong that fear of popular opposition did not need to be considered. The government could and did crush any protest promptly and effectively. Two examples were sufficient.

¹⁷ *Exch., Lord Treasurer's Remembrancer, Misc. Rolls, 2/23.* Much of the payment was made in plate.

¹⁸ The proceeds of the loan of 1544 were only £12,970 (*Letters and Papers, XIX, part I, 368*). Records of repayment are found in *ibid.*, XXI, part I, 775, 477; *Treasury of Receipt, Privy Seals, bundle 4, no. 86.*

¹⁹ *Letters and Papers, XX, part I, 17, 52, 125 (5); part II, App. 4.*

When the Duke of Suffolk called the citizens of London before him at Baynard's Castle, one alderman, Sir William Roach protested the legality of the benevolence. He was sent to the Fleet prison until Passion Sunday, when he purchased his liberty from the king.²⁰ Richard Reed, another alderman, refused to pay, and "could not be persuaded to conform thereto." The fate of Reed deterred others from following his example. For, "as for the defence of the realm and himself he would not disburse a little of his substance, the king thought he should do some service with his body." He was sent North to fight the Scots; to serve under Evers as a soldier with his men at his own charge. Within three months he was taken prisoner and made to pay a heavy ransom.²¹ Had Roach and Reed lived a century later, they would have been remembered as great defenders of constitutional rights in England. As it is, they live in the pages of Wriothesley's Chronicle and in one or two old documents as the despicable examples of men so lacking in patriotisms that they would not willingly give of their substance to the king's necessity.

The Benevolence of 1545 was even more successful than the Loan of 1542, yielding £119,581,²² the rate was lower, but the incidence was much greater. Its general lines were followed in the "Contribution" of 1546, levied on all who had lands of the value of 40 shillings a year or goods worth £15. Here the least rate was higher than in the previous year — four pence in the pound monthly for five months, or twenty pence in the pound on the value of lands, and two pence in the pound monthly for five months, or ten pence in the pound of goods. The provision that payment might be made in five monthly installments is rather novel. The account of this levy has not come to light, but it was probably as great in its returns as the Loan of 1542 and the Benevolence of 1545.

In addition to the £650,000 raised by parliamentary taxation during the war period, the king received £270,000 from arbitrary taxes, in addition to the Contribution of 1546, of which the return is unknown. If the Contribution of 1546 was as produc-

²⁰ Wriothesley's *Chronicle*, 151.

²¹ *Ibid.*, 151, 153.

²² *Exchequer, Lord Treasurer's Remembrancer, Misc. Rolls*, 2/23.

tive as the Benevolence of the previous year, more than a million pounds was taken from the nation in the war period of the last years of the reign, in the form of direct taxes. Though this is thirty times the national revenue in 1485, it was now merely a contribution in aid.

THE LOANS IN FLANDERS

Henry VIII's foreign loans during the last years of his reign are perhaps of more interest, than of preëminent importance. The activity of his agent in Flanders gives some glimpses into the practice of international banking and business in this earlier time. Stephen Vaughan was sent to Flanders in 1544, the year of the Boulogne campaign, to negotiate loans which would be necessary to meet the charges of the year. The regent, the Queen of Hungary, was much surprised to learn that he had come to raise 100,000 ducats monthly for Henry VIII, as she knew he was well furnished with money. She even instructed Chapuys, the Imperial ambassador in London, to tell Henry VIII that the levying of money in Flanders would hinder the Emperor's plans, and that she would pray Henry to levy it in his own realm.²³ No real opposition however, was made to Vaughan's operations. He fell in with a broker or intermediary, Jasper Douche, through whom he was brought into touch with the merchants and bankers who had money to lend. Things moved quickly, at first. Vaughan had arrived on May 23. On June 4, he had promises from Douche that Henry VIII should have 100,000 crowns in ten or twelve days, with interest at 14 in the hundred, or 14 per cent, for the year, to be repaid at the next Cold Mart, February 12 or 14. Douche would deliver a second hundred thousand crowns in July, but could not promise that the interest would be the same.²⁴ The security for the loans was curiously arranged. The royal credit was not sufficient. Some great London mercantile house sent a "bill of credence" to its factors or correspondents in Antwerp, with directions that they become bound to such persons as Vaughan appointed, for a certain sum. The London house was guaranteed against

²³ *Letters and Papers*, XIX, part I, 578, the Queen of Hungary to Chapuys.

²⁴ *Letters and Papers*, XIX, part I, 360.

loss by bonds or obligations in which Wriothesley, Suffolk, Sir Anthony Brown and other members of the Council, with the two Greshams, Sir Richard and Sir John, the two richest London merchants, bound themselves to pay a large forfeit to the house if the loan for which they stood surety was not promptly repaid.²⁵ The guaranteeing houses were perforce Italians, since the Staplers and Merchant Adventurers would not suffice; and of the Italian houses in London, merchants in Antwerp preferred the companies of the Vivaldi and the Bonvise as sureties.²⁶ Before long, Vaughan received his first bills of credence from England, and for some reason, these first bills were refused in Flanders, because the bankers suspected the Bonvise of underhand dealing; and it was necessary to send to London for new bills.²⁷

In this same letter in which he first asked for the new bills, Vaughan sent the good news that the first hundred thousand crowns would be received from the Welsars, a house which had lent 800,000 crowns to the Emperor, "and was not yet empty." The first loan "would be a mean to practice with them otherwise." Vaughan wrote further that he had already "made a motion to them for lead," that is, he had suggested their purchase of some of the lead from the roofs of the monastery buildings which Henry VIII had on hand, and he had been promised an answer in fifteen days.

The new bills of credence arrived from London in due course; but a new difficulty arose when it came to receiving the money. The merchants refused to pay more than 36 stivers to a crown, although the rate in France was 38 stivers.²⁸ Vaughan soon came to the conclusion that he had "to do with foxes and wolves which are shrewd beasts, whose natures are well known to your (the council's) honors." Finally on July 2, the bargain for the first loan was concluded for 122,778 crowns at ten and one-half per cent interest for nine months, payable at the next Cold Mart.²⁹

Even before the money of the first loan was in his hands,

²⁵ *Ibid.*, 759.

²⁶ *Ibid.*, 630, Vaughan to Wriothesley.

²⁷ *Ibid.*, 725.

²⁸ *Ibid.*, 733.

²⁹ *Ibid.*, 822.

Vaughan began negotiations for further loans, and by the end of the year 1544, he had succeeded in raising altogether, 210,000 crowns. Most of the money was spent for the incidental expenses of the campaign of 1544, like the hire of wagons, advances to German mercenaries and the purchases of gunpowder and other stores, while £14,000 Flemish was sent to Suffolk in July for the wages and charges of the solidiers in his division of the army invading France.³⁰

In June, 1544, Vaughan had mentioned the king's lead to the Welsars. In July he advised the Council to send a good stock of lead to Antwerp, to remain there, "the sight of which would get credence easier and cheaper than merchants' bills." The Council was eager to act on Vaughan's advice, and bettered it — they conceived the idea of sending lead to Flanders in great quantities, to sell it there, to provide money for the repayment of the loans. Vaughan cried out upon the plan, since the flooding of the market would surely drive the price down. It would be better, he thought, to extend the loans, rather than secure money for their repayment in this way. The loss on the lead would be 33 per cent, while the loans cost only ten and one-half per cent. Nevertheless as December came around, and the prospect of the coming day of repayment began to disturb the Council, Vaughan went to all the mercantile houses of Antwerp as salesman for the king's lead. But no one offered more than four pounds three shillings for a fodder of 2184 pounds, which was fourteen shillings sixpence below the market price in August, while one house at Aix-la-Chapelle offered to buy 3000 fodder a year at four pounds, with twelve months for payment and an agreement that the king would sell to no one else. The offers were not accepted. Eventually in July, 1545, Vaughan made a contract with Spanish merchants for the delivery of 30,000 hundred weight or quintals of alum, at sixteen shillings eight pence the quintal to the king at London or Southampton, in exchange for lead at four pounds thirteen shillings and four pence the fodder, with customs paid by the Spanish merchants on both the lead, and the alum which the King expected to sell to cloth manufacturers in England for cash.³¹

³⁰ *Ibid.*, 822, 1099, 859, 887; *ibid.*, part II, 108, 160, 220.

³¹ *Letters and Papers*, XIX, part II, 119, 143, 743; XX, part I, 1261, 1265; part II, App. 41.

Some of the first loans were for only six months, and were due in December, 1544. Since Vaughan could sell no lead, and there was no money available in England, Vaughan got them extended until February 10, 1545.³² At this time 210,000 crowns were due, and repayment was promptly made from the revenues in the Exchequer, the Augmentations, the Treasury of the Chamber, the First Fruits and Tenths, and the Mint through Sir Richard and Sir John Gresham.³³ The king's credit now stood very high. Before long, the "Fowkers" (Fuggers), acting through Douche, offered, among other things, to bargain for any sum the king pleased upon the credit of the Staplers and the Merchants. Much negotiation followed. Vaughan wrote: "We have much ado here with the Fowker for the making of his obligations. Wonderful tricks had a lawyer here devised to bind the king's Majesty and his city (of London) in, all of which we refused." Finally the Fowker agreed to accept the obligation of merchants of London and the king's promise *in verbo regio*, and lent him 300,000 crowns, of which 40,000 crowns was in jewels and the rest in money, at ten per cent on the money only. The low rate of interest was accounted for by the profits on the jewels. An extra two per cent was added to dispense with the obligation to repay in carolus gilderns and crowns.³⁴ As soon as the agreement was concluded came a new difficulty, about getting the money out of the country. The Flemings suspected that Vaughan was going to try to send "valued gold," money of good fineness, into England, to be melted down and minted into the king's new debased coins. This they felt would destroy the Low Countries. Vaughan denied any such intention; but at the same time he was planning with Paget and Wriothesley to smuggle the money out of Flanders to Calais in wagons, packed away under merchandise.³⁵ In September all the money in Vaughan's hands was arrested, to prevent its export; but permission was finally given to export under certain safeguards.³⁶

³² *Letters and Papers*, XIX, part II, 755.

³³ *Letters and Papers*, XX, part I, 154; XXI, part I, 716 (4), (5).

³⁴ *Letters and Papers*, XX, part I, 13, 892, 996, 1316; part II, 36, 114, 335, 362, 595, 707 (19).

³⁵ *Ibid.*, XX, part II, 262.

³⁶ *Ibid.*, 388, 407, 507, 550.

During 1545 Vaughan carried out other negotiations with Christopher Haller — who demanded impossible sureties, — with Douche on his own account, and with the Bonvise and Ancelyn Salvage. In all, he raised £128,929 Flemish during the year, of which he expended £77,066 for german mercenaries, paid £31,827 to Thomas Gresham to be taken to Calais, and carried 40,000 crowns in jewels to England, on his return thither at the end of the year.³⁷

Early in 1546 he returned again to Flanders, bringing with him a letter of credit on Bartholome Compaigne and fellowship for £6,000 Flemish. He at once set about raising new loans. John Carlo Affaitadi, who had advanced 50,000 crowns in 1544, now wished to have the king take a great diamond in part payment of a new loan; the Fuggers raised the question of sureties, since those which the king offered were insufficient. In reply to Paget's importunities for more speed, Vaughan once wrote, — "I trust the king's Majesty doth not think that I am able to borrow his Highness £40,000, £50,000, £60,000, or £100,000 upon my credit only. As these be no wanton sums, no more be they to be found in every man's house. Ye have already had £100,000 upon the credit of London. If ye woll have me press men overmuch, ye shall too much discover that which were better not known. Men here be wise, have many eyes, great intelligence out of all countries. Think you that these men will disburse so huge sums of money before they can be honestly assured to be repaid again? 'If ye woll have me make haste, then can I certainly answer you I shall not speed * * * * I wot not what to say when such sureties will not be given as they desire. Prepare sureties to the contentation of men here and I will wage my life to serve the king's Majestey with £200,000 Flemish, but if that come not, I shall be able to do little. Think you that the merchants here woll take the bonds of noblemen in England? No, I assure you. And as to our merchants they are better known to strangers here than to ourselves. They woll not all be taken for 30,000 crowns, no, though ye lay them heaped all in one bond.'" ³⁸ Vaughan succeeded at last in raising £30,000 Flemish in fustians from the Fuggers on the bond of the city of

³⁷ *Ibid.*, 957.

³⁸ *Letters and Papers*, XXI, part I, 241, February 18, 1546.

London, to be repaid in six months. Of this £30,000, £12,000 was used to repay the advances made in the previous fall by Diodati and Company, and Baldassar and Company on the letters of credit of Bonvise and Salvage. An additional £6,000 was used to repay the advances made in the previous fall for six months. To the loan from the Fuggers was attached the "hard condition" that the fustians be sold by the king at a price not lower than he had paid for them.³⁹ The sale of these fustians, as well as the exchange of lead and alum arranged somewhat earlier, was in charge of Sir John Gresham and Andrew Judd. The fustians were sold at little or no loss, but the alum received in exchange for £17,700 worth of lead brought only £7,700. The net loss to the crown on the two transactions was £10,200.⁴⁰

Vaughan further succeeded in the early part of 1546 in raising £27,125 on letters of credit of Italian houses in London, but he failed to carry through negotiations for 600,000 crowns or £200,000 Flemish needed to pay off the bonds that were to fall due in the summer and fall of the year. The most important part of these were the obligations held by the Fuggers for 300,000 crowns borrowed in 1545 and the £40,000 Flemish borrowed in February 1546, both due on August 15, 1546. In May, Vaughan who had a little unemployed money on hand tried to get the Fuggers to accept part of the debt due to them before time, on condition that they would respite the payment of the rest as long after the day. But the Fuggers' Antwerp agent refused to extend part of the loan in order to receive part of it beforehand, and no one was willing to advance any sufficient sum on the obligation of London, which was all that Henry VIII had to offer. The Council studied the problem and concluded that the smaller loans, owing to Italians, the greater portion of the debt due to the Fuggers which with interest amounted to £152,180 Flemish, should be repaid, but that the rest must be prolonged, if it were necessary to send a special agent to Anton Fugger himself in "Doweheland," to do so.⁴¹

During May, June and July £94,000 were scraped together in the various revenue treasuries and made over by exchange by

³⁹ *Ibid.*, 367, 409, 410, 504 (24).

⁴⁰ *Declared Accounts, Pipe Office*, no. 11.

⁴¹ *Letters and Papers*, XXI, part I, 1042.

English and Italian merchants to Flanders.⁴² Erasmus Sheetz, who was to figure very prominently in Edward VI's and Mary's reigns as a royal creditor, lent the king £20,000 Flemish, paying it directly to the Fuggers.⁴³ Finally the tension was relieved by the consent of the Fuggers to an agreement that of their total debt of £152,180 payable on August 15, 1546, £92,180 should be paid, and the rest respited for six months at six and one-half per cent interest for the term, while the king should buy from them 8571 quintals, 13 pounds of copper, at forty-six shillings eight pence the quintal, at a cost of £20,000 Flemish payable without interest at Antwerp, August 15, 1547. Both the unpaid portion of the loan and the debt for the copper were secured by the bonds of the Mayor and commonalty of London.⁴⁴

But difficulties were not yet over. The Emperor's preparations for war in Germany brought trade to a standstill in Flanders during the summer. English merchants could not sell their cloth, and were therefore unable to meet the payments of their exchanges in August. Moreover, the king's debased money would not be accepted by Italian bankers in Flanders. With only money at his disposal which the king's creditors refused to accept, and the time of payment passed, Vaughan was in an unpleasant position early in September. "The Fugger is never from me," he wrote; "the house of Bonvyce whose day was the fifth instant pulls me hourly by the sleeve."⁴⁵ On September 9th the Bonvise having received only £3,000 Flemish of the £9,000 due them, sent to Vaughan demanding the rest. Vaughan replied that he could only pay if a good part were taken in angels. Then the Bonvise declared in a great heat, that he would take no more angels or British coin, and for his credit as a merchant, he must bring a notary to protest against him for non-payment. Eventually however, during September and October the Italians and the Fuggers received what was due to them, and their receipts taken.⁴⁶

⁴² *Declared Accounts, Pipe Office*, no. 10; *Letters and Papers*, XXI, part I, 1380, 1421, 1535. The amounts stated in these accounts vary slightly.

⁴³ *Letters and Papers*, XXI, part I, 1420.

⁴⁴ *Ibid.*, 1250, 1383 (98), 1537 (2).

⁴⁵ *Letters and Papers*, XXI, part II, 51.

⁴⁶ *Letters and Papers*, XXI, part II, 70, 154, 177, 317; *Declared Accounts, Pipe Office*, no. 9.

Henry kept faith with his foreign creditors even though he was a little slow in paying. He left no overdue loans unpaid at his death in January, 1547. The loan of £20,000 Flemish of Erasmus Sheetz and a debt of £80,000 Flemish to the Fuggers, (£60,000 for the extended balance of the loan due in 1546 and £20,000 for copper purchased) were left as a heritage to Edward VI. The new government paid Sheetz's loan and the £60,000 Flemish owing to the Fuggers, when payment fell due in February, 1547. When however, the payment of the £20,000 for the copper fell due in August, 1547, the debt was renewed and more copper purchased.⁴⁷

DEBASEMENT OF THE COINAGE AND THE PROFITS OF THE MINT

The alienation of crown lands and monastic estates to provide war resources defeated the plan for a sufficient revenue system under the king's own control; the use of direct taxes on a large scale enforced national thrift in war time, and perhaps helped to familiarize the people with the idea of paying taxes. Ultimately the social effects of these measures were enormously beneficial — the Long Parliament would have been impossible had Henry VIII not sold so much of the monastic lands. But no good can be alleged for the most desperate of the war measures of Henry VIII's ministers, the debasement of the coinage, to provide immediate funds. The debasement of the coinage aided in enhancing the price of all commodities which the government was buying in great quantities to supply its armies. Prices were already rising in England before the debasement began, as a result of the price revolution, but the upward tendency was greatly accelerated by the debasement. The effects of the price revolution and of the debasement are so inextricably connected in Edward VI's and Mary's reigns that it does not seem possible to disentangle them. But the general rise in prices due to the two causes was serious for the government. Inasmuch as the crown lands were rented on long term leases, it was not possible for the government to increase its rentals at once to correspond with the lower value of money. Similarly for the other revenues. There was a kind of poetic justice in the situation. The crown cheated the people to get immediate funds; it had to take back

⁴⁷ *Declared Accounts, Pipe Office*, nos. 9, 14.

the poor money in payment of its revenues at its face value; it had to pay at increased rates for all its supplies; the real value of the revenue expressed in terms of purchasing power was seriously reduced.

The enhancement of the coinage was no new thing in Europe in the fifteenth and sixteenth centuries, and it had been effected several times in England since the beginning of Henry VII's reign. In 1489 Henry VII "let smite" a new coin called a royal valued at ten shillings, and groats and pence were coined lighter than they were before, while the value of the old noble was raised from six shillings eight pence to eight shillings four pence.⁴⁸ In 1524 Wolsey turned to a study of the English coinage and came to the conclusion that English coins were undervalued as compared with those of the continent.⁴⁹ In 1526, accordingly, the value of gold was increased from forty to forty-five shillings an ounce. The old angel, containing one-sixth of an ounce of gold was thus raised from six shillings eight pence to seven shillings six pence, and other coins proportionately. New coins, of lighter weight, the george noble and the crown of the double rose, worth six shillings eight pence, and five shillings, and lighter groats, half groats and pence were minted.⁵⁰ The measure was one of self protection to prevent the heavier and better coin from being drawn out of England to the continent. Inasmuch as the continental nations especially France, continued to debase their coinage, English coins were again altered in 1542. The weight remained the same, but the fineness was changed. The alloy in the gold coins was increased from one-third of a grain to one carat, while the alloy in the silver coins was increased to two ounces in the pound Troy. The legal value of the ounce of gold and silver remained unaltered, but the fineness of the metal in the coins was lowered. This debasement was not a financial expedient; it was defensible on purely economic

⁴⁸ *Three Fifteenth Century Chronicles*, Camden Society (1880), 80.

⁴⁹ *Letters and Papers*, IV, 956, notes in Wolsey's hand.

⁵⁰ *Letters and Papers*, IV, 2338, 2423, 2597, 2609; *Two London Chronicles*, 2; *Grafton's Chronicle*, II, 93; *Grey Friar's Chronicle*, 33; *Hall's Chronicle*, II, 77; *A Short English Chronicle*, 93. The two proclamations ordering the change in value were issued August 22, 1526, and November 5, 1526.

grounds, as a necessary measure to prevent the export of gold and silver from England.⁵¹

But the great debasement which began in 1544 has no such justification. The financial situation of the time, the pressing need of money and Wriothlesley's calculations of the king's gain and profit by the measure leave no doubt that it was adopted to supply sorely-needed ready money, and for no other purpose. Of course the real reason was masked behind the causes which were deemed valid for earlier cases of the same kind. The preamble of the proclamation ordering the debasement solemnly declares that whereas in Flanders and in France the value of money was so enhanced that coin was daily carried out of the realm notwithstanding the statutes, the only remedy appeared to be the enhancing of the value of the silver and gold within the realm.⁵² First the value of gold and silver was raised; an ounce of gold was raised in value from forty-five to forty-eight shillings and an ounce of silver was raised from three shillings nine pence to four shillings. Almost immediately after, the standard of fineness was lowered. On May 28, 1544 the standard fineness of gold used in the coinage was fixed at 23 carats; a year later (March 27, 1545) at 22 carats; on April 1, 1546 at 20 carats. The silver coinage was even more debased. In 1544 nine ounces of silver to the pound Troy were used, in 1545 six ounces was prescribed and in 1546 only four ounces, with eight ounces of alloy.⁵³

The king's profit came in the first place from the enhancement in the values of the gold and silver, since he was able to coin at a great profit great masses of plate in his jewel house, and to recoin money in his own hands. He also reduced the value of his debts. His greatest profits however, came from the debasement of the fineness of the coinage. He purchased gold bullion at twenty-four carats fine at the legal price; he issued it forth from his mints at twenty-three, twenty-two, twenty car-

⁵¹ *Letters and Papers*, VI, 197; VII, 1332; XI, 45; XV, 791; XVII, 197; XIX, part I, page 61. *Accounts, Exch., Queen's Remembrancer*, 302/22. The profits to the crown in two years were only £23,189.

⁵² *Letters and Papers*, XIX, part I, 513, the proclamation of May, 16, 1544.

⁵³ *Letters and Papers*, XIX, part I, page LV, account of Sir Martin Bowes, under treasurer of the Mint.

ats; and for this ounce of twenty carats of gold and four carats of alloy he received likewise the legal price, 48 shillings. On every pound weight of gold coined, the king gained from twenty-seven shillings six pence in 1544 to ninety-four shillings six pence in the early part of 1546; and on every pound weight of silver he gained from nine shillings one-half penny five mites in 1544 to twenty-nine shillings eleven pence in 1546.⁵⁴ The king's profits from his mints, arising from the recoinage and debasement were £363,000 from May, 1544, to the end of the reign. The evil practice begun by Henry VIII's government was bettered by his son's; between May 14, 1544 and January 1, 1551, the crown received £900,000 clear from the profits of the mint—more than the revenues of the court of Augmentations for the same period.⁵⁵

⁵⁴In detail the king's profits were June 1, 1544 to March 31, 1545
 in every pound Troy of gold 27s. 6d.
 in every pound Troy of silver 9s. ½d. 5 mites

April 1, 1545 to January 1, 1546
 in every pound Troy of gold 53s. 6d.
 in every pound Troy of silver 20s. 7d.

January 1, 1546 to March 31, 1546
 in every pound Troy of gold 42s. 6d.
 in every pound Troy of silver 20s. 7d.

April 1, 1546 to September 30, 1546
 in every pound Troy of gold 94s. 6d.
 in every pound Troy of silver 29s. 11d.

September 30, 1546 to March 31, 1547
 in every pound Troy of gold 84s. 6d.
 in every pound Troy of silver 29s. 11d.

The figures include the profits of the debasement and the ordinary profits of the mint. They are taken from the accounts of Sir Martin Bowes, Under Treasurer of the mint, *Letters and Papers*, XIX, part I, page LIII ff.

⁵⁵*Declared Accounts, Pipe Office*, no. 2077, Declaration of the account of Sir Edmund Pekham, High Treasurer of the Mint.

CHAPTER XIV

THE SCOTCH AND FRENCH WARS, 1547-1550

The wars of Henry VIII with France and Scotland had seriously strained the government's resources in the last year of his reign in England. Besides the permanent reduction of the revenue by the great alienation of crown lands,¹ and the increased expenditures induced by the rise of prices, there was a debt of £100,000 owing in Flanders; Boulogne was a heavy burden on the state; the costs of the upkeep of the fleet, the garrisons, and the fortifications at Calais, Berwick and other places were large.² But the wars did more. By them the business of the state was so tremendously increased, that even if the king had not been growing old, it would have been a physical impossibility for him to guide and direct all of its manifold activities himself. As it was, the state was turned over to the official class, who as members of the council assumed more and more completely the management of affairs. Creatures of Henry VIII, as long as he lived they stood in fear of him, but the accession of a child king left them in absolute control of the state. They had been rewarded by Henry VIII, adequately at first, more richly in the latter years. They were rich, but not yet so rich as they were to make themselves. It must not be supposed that they crudely stole government money from the treasury. They solemnly and in all legal form conveyed to themselves the basic resources of the state, the crown lands, as fitting rewards

¹ In the years between 1540 and 1544, both inclusive, the average rental of monastic lands alone had been about £44,000. In 1545 it fell to £32,739; in 1547-48 the first year of Edward VI's reign, the entire rental of all crown lands, monastic and non-monastic, was only £51,058. *Augmentations Office Treasurer's Rolls of Accounts*, nos. 1-4.

² *Exch. of Rec., Misc. Books*, 259, Teller's declarations of issues in the Exchequer, 1544-1560.

of the grateful boy king to themselves for their toils endured in the onerous business of government. Before Henry VIII was dead a week Paget produced a list of promotions and grants, intended, as he alleged, by Henry. From year to year huge blocks of land were thus voted by the council to themselves and their retainers; throughout the reign of Edward VI lands to the annual value of £27,000 were thus disposed of as free gifts.³ These lands; greater in extent than the land sold during the reign, were permanently lost to the crown for practically no return at all, and the revenues reduced. This was all the more serious for the future, for as rents and values rose these lands would have brought an ever increasing revenue. Another serious evil was the promiscuous granting of annuities and pensions and lands for life to royal favorites. Edward VI's government was following a practice of Henry VII's and earlier reigns in this; many of the pensions and annuities paid in Edward VI's time had been granted by his father. To provide for such payments, more than £32,000 of the royal revenues was required in 1551.⁴

But the picture of graft and corruption must not be overdrawn. Certain very important reservations must be kept in mind. There was no disintegration of the financial system, no general breakdown of all restraints in a universal plunder of the state. It was only to the masters of the state, the council and its friends, that robbery was permitted, and then only in legal form. In its dealing with the government agents and officials who supervised the revenue and expenditures, the council insisted upon a high standard of honesty and exactness. From the very beginning of the reign of Edward the council devoted a very considerable amount of its time to a consideration of finances, as the acts of the privy council show. Careful accounts of the great treasurers were frequently ordered to be prepared and

³ *State Papers, Domestic, Edward VI, XIX*. In the first year of the reign gifts were made of lands to the annual value of £5721-13-8; in the second year £3358-13-9; in the third year £1257-6-2; in the fourth year £8804-19-10; in the fifth year £3991-10-8; in the sixth year £3442-13-10; in the seventh year £4099-17-11. Rents to the value of £3619 were reserved to the crown out of these grants.

⁴ *Add. Mss.*, 30198, report on the revenues for the year 1550-1551. Annuities and pensions, £20,000; grants of land for life, £12,000.

laid before the council, or committees of the council were appointed to investigate the state of the revenues. Individual members of the council sat as commissioners for the auditing and passing of the accounts of the very large numbers of persons who had royal money in charge during the wars with Scotland and France.⁵ These accounts seem to be carefully and accurately drawn. It is possible of course, that the crown was overcharged, that goods provided were inferior in quality, or that supplies intended for the government were diverted to private uses. But charges of this kind brought to the attention of the council are negligible.⁶ On the other hand there were some notorious cases of embezzlement of government funds by important financial officials. Sir William Sharington, master of the mint at Bristol, one of the Lord Admiral's adherents, withheld certain sums from his books in every month and burnt the originals from which the indentures had been made up. He did not know how much had been stolen, but admitted that it was over £4,700.⁷ Lord Arundel, the Lord Chamberlain, was charged with peculation at the time of Somerset's fall, which he confessed, and in punishment he was sentenced to forego his office and pay a fine of £12,000, "by £1,000 by the year."⁸ In 1551, Sir Martin Bowes was contented to give unto his highness by the name of a fine, £10,000 to be clear of all demands.⁹ In the summer of 1552 some of the most able of Somerset's adherents were brought to book. Whalley, the receiver of the crown revenues in Yorkshire, confessed that he had lent the king's money upon gain and lucre, that he had paid one year's revenues with arrearages of the last and had bought the king's lands with the king's own money.¹⁰ The system of book-keeping in vogue made Whalley's

⁵ For orders to the treasurers to lay their accounts before the council see *Acts of the Privy Council*, n.s., III, 29, 130, 133, 228, 236, 314; IV, 12, 44, 62, 164, 183. For investigations of the revenue by committees of the council, see *Add. Mss.*, 30198; *State Papers, Domestic, Edward VI*, II, 9, 30, 31. For the audit and passing of accounts by commissioners see the preambles of the declarations of accounts of this reign, e.g., *Declared Accounts, Pipe Office*, 43, 17, 14.

⁶ *Acts of the Privy Council*, n. s., II, 492; III, 127.

⁷ *Historical Mss., Commission Reports, Hatfield Mss.*, I, 64-70.

⁸ *Acts of the Privy Council*, n. s., II, 398.

⁹ *Acts of the Privy Council*, n. s., III, 188.

¹⁰ *Journal of Edward VI*, 71.

practice easy for a dishonest man. It seldom happened that all the rents and revenues due in a district for the year were collected. Yet when the formal declaration of the account was made, the issues and rents for the year were set down in full on the debit side of the account. On the credit side were entered the payments of money to the crown's use, including all the actual receipts of the year. What had not been collected was then entered on the credit side of the account as "arrearage" for the year, to balance the two sides of the account. The arrearage of the year was added to the arrearages of past years, which formed an ever-increasing sum, in which little interest seems to have been taken when the accountant presented his account in the following year. Some arrears of rent were paid every year, but inasmuch as the records of the details were scattered in many books, it was easily possible for the accountant to conceal such payments and use them, as Whalley did, for his own purposes. Similar operations on a far greater scale than Whalley's were conducted by John Beaumont, receiver-general of the Court of Wards and Liveries. He concealed in his arrearages receipts of £9,763 in money, and £11,822 in obligations, more than £21,000 in all. These sums he had lent to purchase the king's own lands from him. He was further guilty of taking bribes as a judge in chancery.¹¹ Lord Paget was also found guilty at this time of great malefeasance in his office of Chancellor of the Duchy of Lancaster, for which he was sentenced to a fine of £8,000,¹² and in the same manner Sir John Williams, treasurer of the Court of Augmentations, spent some time in the Fleet prison. From his accounts it appears that he had kept back £28,445 received in his own time and in the time of his predecessor from the sale of lands.¹³

Punishment for illegal fraud was of the nature of political vengeance; there is therefore reason to suspect that the number of offenders included many who never lost favor, and went unpunished. And yet, when most has been made of the corruption of public life in Edward VI's reign, Froude's picture of "all

¹¹ *Journal of Edward VI*, 70. Court of Wards, Misc. Books, 365, ff 166-236. This is the account in which the concealment is admitted.

¹² *Journal of Edward VI*, 71, 86. *State Papers, Domestic, Edward VI*, XV, 58.

¹³ *Augmentations Office, Treasurer's Roll of Accounts*, no. 8.

but universal fraud" and the "infinite" "expenses of universal speculation" in which all classes of persons in public employment were contending with each other in the race for plunder and extravagance, is much overdrawn. It rests upon such false assumptions as an increase in the expenditures in the royal household from £19,000 a year in 1532 to over £100,000 a year in Edward's time; the disappearance of the chantry lands into private hands "with small advantage to the public exchequer;" and upon the hysterical overstatements of the popular revivalists, Lever and Latimer.¹⁴ Public corruption heightened, but did not cause the serious financial difficulties of the reign. The frauds were cumulative, for even the effects of the plunder of the crown estates by the councillors did not show to the full until the last year of the reign, but the financial difficulties began almost at once. Of these the most obvious explanation is the renewal of the Scotch and French wars, and their aftermath.

The wars demanded great sums of money, at once available. During the first five years of the reign of Edward, his government was called upon to find a total of £1,386,687 in addition to the normal governmental expenditures, for war purposes, for the fleet, the armies in Scotland and France, the garrisons at home and in Boulogne and Calais, and for new fortifications.¹⁵ There was no surplus on hand, as there had been in 1542; the situation was similar to that in 1522-1523, during the second of Henry VIII's French wars. At this time when Wolsey failed to get money by means of loans and subsidies, he had been compelled to advise the king to make peace. But since then Henry VIII discovered means of raising money quickly by the sale of lands and the coinage of debased money. In this way entered into by Henry VIII in his last years, the Edwardian government followed on to procure the ready money needed "to go on with."

With the first rumors of a renewal of war with France, and the beginning of war with Scotland, the confiscation of the accumulated wealth of the worn-out institutions of the church was consummated. In 1545 Henry VIII had received the power to visit and suppress colleges, hospitals, free chapels, chantries and

¹⁴ J. A. Froude, "*History of England*," V, chapters 26, 27. See below pp. 00, 00.

¹⁵ *State Papers, Domestic, Edward VI*, XV, 11.

other corporations of similar nature. Many chantries had been suppressed during Henry VIII's lifetime. The act lapsed at his death. In December, 1547, parliament renewed the statute in favor of Edward VI, vesting all the property of colleges and chantries in the king after the next Easter.¹⁶ The council viewed the grant as made "specially for the relief of the king's majesty's charges and expenses which do daily grow and increase by reason of diverse and sundry fortifications, garrisons, levying of men and soldiers which is at this present so chargeable and costly that without great help and aid of money his majesty should not be able to sustain the charges thereof." In April, 1548, when the approach of war with France made it necessary that his majesty should "have in readiness all that should be for the defence of his majesty's realm," and the council noted that "nothing (is) so much lacking as money to maintain the costs and charges thereof, without the which no defence can be had," it was decided, since there was at this present "none other means without great difficulty, danger and grudge to make such a mass (of money) as might serve for this present necessity," to authorize the sale of chantry lands to the annual rental value of £5,000. Before the Michaelmas accounts of 1548 were made up, £110,486 had been received by the commissioners of the sales, and paid into the treasury of the Augmentations Court.¹⁷ The sales not only provided the government with available funds for a time, but assured the support of the war by the wealthy merchants of London. The government's need furnished them further opportunity to purchase the land which was still the safest investment for surplus capital and the necessary basis for social distinction.

¹⁶ *Statutes*, 1, Edward VI, c. 4.

¹⁷ *Augmentations Office, Treasurer's Roll of Accounts*, no. 4. In 1549 there was received for the sale of lands £92,695; in 1550, £47,286; and in 1551, £7,856 (*Augmentations Office, Treasurer's Roll of Accounts*, nos. 5, 6, 7). Sales after 1551 are treated below. The receipt by the state of these sums effectively replies to Mr. Froude's assertion that "the chantry lands, which if alienated from religious purposes, should have been sold for public debts, were disappearing into private hands with small advantage to the public exchequer" (*History of England*, V, 154). As a rule the state received twenty years' purchase, or twenty times the annual value, a good price.

As was shown "for certain by divers motions in the late parliament made," the king's loving subjects "were induced the rather and franklier to grant" the chantries and other religious corporations to the king "that they might thereby be relieved of the continual charge of taxes, contributions, loans and subsidies the which by reason of wars they were constrained in the late king of famous memory his majesty's father's reign to abide."¹⁸ But the freedom of taxation which parliament had sought to achieve by the transfer of the chantries to the king was short-lived. The expenditures for war purposes were so great that a new appeal to parliament was necessary in 1548. The tax measure which followed was a curious one. Instead of a direct tax on land, it provided an indirect tax on sheep and wool, to the raising and production of which land was being more and more devoted. For the inadequate subsidy it offered a substitute which promised to yield £106,000 to £156,000 a year. This estimate was based upon a calculation of the number of sheep in England in Edward III's reign, arrived at from the wool customs of that time.¹⁹ In the measure is to be seen also something of Somerset's spirit of agrarian reform, a design to check conversion of arable to pasture land by indirect taxation. With the new taxes on sheep, wool, and woollen cloth, were combined some of the older subsidy features of a tax on personalty and a poll tax on certain aliens.²⁰ At the same time the clergy made a grant of a subsidy of six shillings in the pound of the yearly value of all their livings, payable in three years.²¹ The relief was not nearly so productive as the later subsidies of Henry VIII's reign. The first payment, in 1549, brought in

¹⁸ *Acts of the Privy Council*, n. s., II, 184.

¹⁹ *State Papers, Domestic, Edward VI*, II, 13. This is a paper book endorsed "Customs for Wools," addressed to my Lord Protector's grace. It sets forth the project in several forms. See also *ibid.*, V, 20.

²⁰ *Statutes*, 2 and 3 Edward VI, c. 36. The tax, known as the Relief, was taken at the rate of 1 shilling in the pound of the value of personalty yearly for three years. Aliens were assessed at double rates; those of them not paying the personalty tax, paid a poll tax of 8 pence. For every ewe sheep kept in pasture was taken 3 pence; every wether 2 pence; every shear sheep on commons 1½ pence, or in lots of more than ten, 1 penny yearly for three years. Each piece of woollen cloth made was taxed 8 pence in the pound of its value.

²¹ *Statutes*, 2 and 3 Edward VI, c. 35.

slightly less than £54,000; the second pyament, in 1550, only £47,500. But before the second payment had been collected, Kets' rebellion had broken out, and Somerset had been deprived of his protectorship. In the parliament of November, 1549, Somerset's agrarian policy was reversed; with the repeal of the Tudor agrarian legislation and the reënactment of the Statute of Merton, there was also the repeal, on the initiative of the commons themselves, of the final payment of the tax on sheep, wool and cloth.²² As a compensation the subsidy of a shilling in the pound of the value of goods was extended for another year.²³ On the whole, but little aid obtained from taxes of parliamentary grant in Edward VI's reign. Their total yield, including £120,000 granted in Henry VIII's time and paid in April and June, 1547, was only £299,000. For the purpose of the wars with Scotland and France the grant of 1548 was of especially little consequence.

The chief reliance of the government, for its war finances, was placed upon the mint, and the profits of coining debased money. In the first two years of the reign, Henry VIII's standard of fineness, eight parts of alloy and four parts of silver, and his dies, continued to be used. The coins of these years are identical with those of the last years of Henry VIII's reign. In 1549 a change was made. The gold sovereign was coined 22 carats fine instead of 20; but the new coin was lighter, containing 170 instead of 192 grains of metal, and only 156 grains of pure gold as opposed to 160 grains in the older coin. In the silver coins the silver content was raised to six parts, with six parts of alloy; but as the new coins were only two-thirds the size of the older coins which they replaced, they contained exactly the same number of grains of pure silver.²⁴ There was great difficulty in securing bullion due to the prohibition of the export of bullion from Flanders, where large quantities were

²² *Commons Journal*, I, 11. On Monday, November 18, 1549, it was ordered that the speakers and others of the house should be suitors to know the king's pleasure by his council, if upon their humble suit they might treat of the last relief for cloths and sheep. On the 20th the king's pleasure was announced that the house might treat for the act of relief "having in respect the cause of the granting thereof."

²³ *Statutes*, 3 and 4 Edward VI, c. 23.

²⁴ C. W. C. Oman, *The Tudors and the Currency*.

purchased by loans.²⁵ Yet, with all the difficulties, the profits of the government were very great. Between the first day of Edward's reign and the first of January, 1551, covering approximately the war period, £537,000 was realized on the debasement of the currency.²⁶

The confiscation of the chantries, the sale of their lands and goods, the new taxes, and the debasement of the currency provided notable sums, but not enough to meet the war bills. Further shift was made by using funds intended for normal charges, so that at the end of the war the various governmental departments were deeply in debt.²⁷ Finally heavy loans were made in Flanders, of the Fuggers, the Tuchers, the Sheetz and other bankers in Antwerp. At times to repay one loan another was made; or the original loan was extended on disadvantageous terms, generally involving the purchase of fustians, jewels or other goods by the king.²⁸ In this device of foreign loans, as

²⁵ *State Papers, Domestic, Edward VI, VIII, 38.*

²⁶ *Declared Accounts, Pipe Office, 2077*, Declaration of the account of Sir Edmund Pekham, high treasurer of the mints, to January 1, 1551.

²⁷ *Lansd. Mss.*, II, f. 125. A paper noted in Cecil's hand, drawn up before November, 1552. The Household owed £28,000; the Chamber £20,000; the Wardrobe £8,333; the Stables £1,000; the Admiralty £5,000; the Ordnance £3,134; the Surveyor of the Works £3,200; the Treasurer of Calais £15,000; the Treasurer of Berwick £6,000; the Master of the Revels £1,000; the Treasurer of Ireland £13,128; and paymasters at Sicily, Alderney, Plymouth and the Isle of Wight £2,000.

²⁸ One bargain made March 23, 1551, between the council and Christopher Haunsell for and in the name of Anthony Fugger and his nephews provides: For the sale of one jewel containing four rubies marvellous big, as the boy king described it in his Journal, one orient, and one great diamond and one great pearl for £33,333-6s.-8d. Flemish to be paid in Antwerp without interest in eleven months. For the sale of twelve thousand marks weight of fine silver bullion at 50s. 4 4/5d. the mark, to be delivered at Antwerp by the last of August next. A clause protects the Fuggers in case of lawful impediment to the delivery. For the sale to the king of so many bales of fustians as shall amount to £14,000 Flemish, to be paid in Antwerp without interest April 30, 1552. All fustians will be sold in England and not conveyed beyond sea again. Provision is also made that where the king owes Erasmus Sheetz and Sons £42,090 Flemish, payable May 15, 1551, the Fugger shall pay the Sheetz this sum of £42,090, and the king shall repay one year later, with interest at 8 per cent. Finally where the king owes the Fuggers £38,976 Flemish, payable August 15, 1551, the sum is respited for a year at 12 per cent. *Treasury*

in all others, the Edwardian councillors were simply following, and perhaps bettering the examples of Henry VIII. They paid the same interest, 14 per cent, they renewed and prolonged as he had done. But their operations were on a larger scale and they created a heavier incubus of debt to burden the post-war period.

of Receipt, Letters Patent, bundle 4, No. 15/37. A letter of the council dated April 9, 1550, to Damosell agent in Flanders urges him to do the best he can for prolongation of the debt due in May, 1550, for a year longer. He is to accept an offer to prolong, purchasing 2400 kintalls of powder at 50s. a kintall, to be paid at the end of the year also. *Acts of the Privy Council*, n. s., II, 426. In his Journal Edward notes, "debt of 30,000l, and odd money put over for a year, and there was bought 2500 quintals of powder" (*Journal*, 18).

Other loans abroad during the war were, 13 October, 1547, of Anthony Fugger, 129,650 florins to be repaid March 31, 1548; April, 1548, of Lazrus Tucher 167,218 florins; 11 September, 1549, of Anthony Fugger 328,800 florins to be repaid August 15, 1550; 5 May, 1550, of Erasmus Sheetz, 107,520 florins to be repaid May 15, 1551. *Treasury of Receipt, Letters Patent*, bundle 4; *State Papers, Domestic, Edward VI*, IV, 5.

CHAPTER XV

NORTHUMBERLAND'S FAILURE, 1550-1553

Peace was made between France and England in 1550. Among the terms of treaty was a provision for the restoration of Boulogne, of which the capture, fortification, and keeping had cost the English state £1,342,550 in five and one-half years. Its surrender for nothing would have been a great financial relief to the English government; Henry II of France generously paid 400,000 crowns (£133,333) for its recovery. For months after the peace was signed the garrisons at Calais and in the north were continued at their full war strength, because "there wanted money to dispatch them," that is pay their arrears of wages and discharge them. Although there seems to have been an intention of keeping the 400,000 crowns as ready money available in emergencies — the first payment was ordered laid up in the Tower "for all purposes" — it was at last necessary to order payments to be made from it to discharge the soldiers and meet other charges.¹ Despite the discharge of the soldiers from Calais and in the north, there remained a large war establishment, which could not be, or was not at once, disbanded. At Calais the ordinary garrison had long cost £5,000 a year more than the rents of the town and the wool customs collected by the merchants

¹ *Acts of the Privy Council*, n. s., III, 93. Of the first (half) payment £10,000 were sent to Calais; £9,500 to Ireland; £15,166 to the north; £2,000 were assigned to the ordnance department; £1,000 to Alderney, and £1,000 to the Admiralty. Of the second payment of 200,000 crowns, £8,000 were sent at once to Calais; £5,000 to the north and £10,000 "was appointed to be occupied to win money to pay the next year, pay the outward pays; and it was promised that the money should double every month" (*Journal of Edward VI*, 26). The scheme by which the money thus invested was to double every month is described by Froude, in *History of England*, V, 265.

of the Staple, while the cost of work on the fortifications and the wages of the extraordinary crew continued at over £19,000 a year in addition.² There were heavy charges for works and garrisons at Berwick, and on the Scotch marches, and in the various blockhouses or forts on the English coast;³ there were the charges of the admiralty and ordnance offices, and the expenditures in Ireland above the Irish revenues. The Irish revenues, after the costs of the civil government there had been paid were about £4,700 sterling a year. During the first years of Edward's reign the island had been aflame with insurrection; large sums had been sent to Ireland for military purposes which the Irish revenues did not meet. In 1550, however, it was resolved that Ireland should no longer be a drain on the English treasury; the situation was to be reversed, and Ireland was to contribute to the royal resources. To carry out the new policy, Anthony St. Leger returned as deputy.⁴ He was as little successful in making Ireland "pay" as Henry VIII had been in a similar scheme; the charges of the necessary military establishment increased by leaps and bounds. Whereas in 1547 the charges of Ireland were £15,500, in 1551 and 1552 they rose to £42,000. The Irish revenue did not increase; the deficit had to be made good from London.⁵

Not directly due to the war, but certainly induced in part by causes connected with the war were the serious increases in the costs of the royal household. In the first years of the reign the household had required about the same amount of money as in the last years of Henry VIII's reign, about £38,000 a year. In 1550 and 1551 the expenditures increased to £50,000 and

² *Add. Mss.* no. 30,198, a statement of the revenues for the year 1550-1551; *Declared Accounts, Pipe Office*, 2079, account of Sir Edward Pekham. In the year February, 1551, to March, 1552, Pekham paid out £25,500 for Calais causes.

³ These required £9733-17-7 for the year 1550-'51. *Add. Mss.*, no. 30, 198.

⁴ Froude, *History of England*, V, 392.

⁵ *Add. Mss.*, no. 4767, f. 99; f. 160. The yearly charge in Ireland is given in the latter paper; anno 1, Edward VI, £15,958; anno 2, £21,024; anno 3, £27,113; anno 4, £20,566; anno 5, £42,986; anno 6, £42, 609. All sums are in sterling money.

£56,000.⁶ This was in part due to increased luxury at the court, in part in all probability to speculation by officials, but in greatest part to the rise in prices. A similar increase, on a much smaller scale, is to be noticed in the wardrobe expenditures. And while the government was endeavoring to meet all these great payments and increases, in addition to normal state expenditures, it was constantly reminded of the unpaid debts in the household, wardrobe and chamber, and of the great loans raised abroad at 14 per cent interest, which somehow had to be paid.

Government finances were studied by the council between 1550 and 1553 with a zeal which shows how clearly the seriousness of the problem was realized. One investigation, carried out by Thomas Lord Darcy Lord Chamberlain, Thomas, Bishop of Norwich, Sir Richard Cotton Controller of the Household, Sir John Gates Vice-Chamberlain, Sir Robert Bowes Master of the Rolls, and Sir Walter Milday one of the General Surveyors of the Court of Augmentations, for the year Michaelmas, 1550 to Michaelmas, 1551, showed that the clear normal income from all sources, deducting fixed charges, grants and annuities, was £168,150. The fees of the royal officials, ministers and servants, the ordinary household and wardrobe assignments,⁷ the expenses of the audit courts, the charges for decays and reparations, and the charges for certain garrisons, that is to say, the normal govern payments, were £131,600. There was available thus a balance of £36,550. From this sum the committee reported, there had to be met the charges of the admiralty, of the ordnance, of the king's privy purse, the New Year's gifts, the charges at Calais

⁶ *Declared Accounts, Pipe Office, 1795.* Household expenditures for the year

1547-48	£38,804- 6s.-6d.
1548-49	41,359- 3s.-4d.
1549-50	50,778-16s.-4d.
1550-51	56,806-13s.-8d.
1551-52	55,791-15s.-9d.
1552-53	51,903-10s.-2d.

The increase is not however nearly so great as has been alleged.

⁷ From time to time each court was ordered to set aside and pay regularly a certain sum for the household. These sums amounting in all to £41,864 in 1551-52 were the household assignment. The expenditures in the household exceeded the assignment in every year of Edward's reign. See above, note 6 of this chapter.

and in Ireland above the revenues there, and the extra charges in the household above the assignment. The various military establishments alone — Calais, Ireland, the navy, the North and Berwick, the ordnance and so forth — took more than £112,000 from February, 1551, to Michaelmas, 1552, or at the rate of £80,000 a year.⁸ The extra charges in the household in the year 1551 were £15,000 more than the assignment. Even with the addition of the subsidy of £43,260 paid in April, 1551, there was not enough money available from the revenues to meet the current charges. Then some way must be found to pay off the war debts of £250,000 owing in England and Flanders.⁹ It was further deemed desirable to "get £50,000 of treasure money for all events," that is accumulate a new surplus,¹⁰ and finally money had to be found for the new standing army, the bands of horsemen attached to Northumberland's most devoted partisans, organized in December, 1551.¹¹

In the expedients which were used to remedy this alarming deficiency, resort was had to all the old devices, betraying a sterility of ideas and the failure to grasp the cause of the situation. Solemnly the council determined upon a policy of retrenchment. The garrisons at little blockhouses like Porland and Pendivis were reduced by from two to four men each, and several small forts were discontinued,¹² with a saving of £583 12s. 6d. a year.¹³ The tables of the "young lords" and others in the household were discontinued, auditorships were abolished to save fees, and workmen discharged.¹⁴ As early as 1551 at-

⁸ *Declared Accounts, Pipe Office*, 2079; account of Sir Edmund Pekham, high treasurer of the mints.

⁹ The amount of the debt is variously stated. An entry in Edward's Journal (p. 66) puts the sum at £251,000 at least in May, 1552; a paper of Cecil's, before November, 1552, puts it at £241,179 (*Lansd. Mss.*, II, f. 125); another paper of 1552 gives it at £235,700 and still another at £219,686 (*State Papers, Domestic, Edward VI*, XV, 13, 14). At least £132,372 was due to the money lenders in Flanders, and £108,800 was owed in England.

¹¹ *Acts of the Privy Council*, n. s., III, 339; IV, 4, 15, 132.

¹² *State Papers, Domestic, Edward VI*, XIII, 10, 11, 12; *Acts of the Privy Council*, n. s., IV, 130.

¹³ *Acts of the Privy Council*, n. s., IV, 139.

¹⁴ *Journal of Edward VI*, 79; *Acts of the Privy Council*, n. s., III, 316;

¹⁰ *Literary Remains of Edward VI*, II, 543, note in the king's own hand.

tention was directed to the superfluous charges of the large number of revenue courts, with too many officers and too little business.¹⁵ They escaped pruning for the moment because an office in a revenue court was a vested interest, a property right, which could be abolished by the state only in return for the compensation of a life pension.¹⁶ In the spring of 1552 the reduction of the fleet was ordered, and it was even suggested that some of the king's old ships be let to rent, and hulks of no more value be sold.¹⁷ There was however, no mention of retrenchment or restriction in the plunder of the crown by the council in the form of grants of land to the councillors themselves, though it is true that the grants of the fifth, sixth and seventh years did not equal in extent those of the fourth year of the reign.

In all the revenue courts there were great arrears of overdue rents and revenues owing to the crown through many years. "My debts owing me" after this sort were estimated by Edward to be £100,000.¹⁸ In times of stringency in the middle period of Henry VIII's reign it was a much used practice "to call in the debts." So at this time. In February of 1551, the treasurer and chancellor of the Augmentations were commanded to bring in with all diligence a book of all such debts and arrearages as are due to the king's majesty in that court, and it may be that similar commands were sent to the other treasurers.¹⁹ Late in the same year and in 1552 commissioners were appointed to call in the debts.²⁰ They succeeded in collecting £16,667 before Michaelmas, 1552.²¹ Something, too, was expected from the fa-

IV, 102, 115, 160, 260. See also *Journal of Edward VI*, 65, 83, for retrenchment in the mint and Ireland.

¹⁵ *Literary Remains of Edward VI*, II, 500, 543.

¹⁶ When the Court of the General Surveyors was amalgamated with the Court of Augmentations, January 1, 1547, the officials of the older court for whom no place could be found were given pensions or annuities of more than £3,000 a year. See Appendix, *Disbursements of the Court of Augmentations*.

¹⁷ *Acts of the Privy Council*, n. s., IV, 46; *State Papers, Domestic, Edward VI*, XIII, 10, 11, 12.

¹⁸ *Literary Remains of Edward VI*, II, 550.

¹⁹ *Acts of the Privy Council*, n. s., III, 228.

²⁰ *Journal of Edward VI*, 56, 58; *Literary Remains*, II, 500.

²¹ *Augmentations Office, Treasurer's Roll of Accounts*, no. 10. All debts were ordered paid to Peter Osborne, who was to act as a special treasurer, keeping the money to the king's use.

miliar device of Empson and Dudley. For in March, 1552, a committee of the council was appointed to examine the penal laws and put certain of them into execution.²² It seems to have been decided to enforce those touching horses and plows, riots, the planting and grafting of trees, the cutting of wood and billets and forestalling and regrating.²³ The sale of the king's gunpowder, fustians, and copper, which he had been compelled to take as "fee penny" for the prolongation of the Flanders loans, and the sale of "certain jewels," bell-metal and lead, part of the spoil of the church was tried.²⁴ Next, the completion of the confiscation of the church plate, and the sale of church goods and ornaments was ordered and carried through. In 1549 commissioners had taken inventories of ornaments, plate, jewels, bells, and vestments in all churches, forbidding the sale or embezzlement of any part of them.²⁵ On February 26, 1551, it was decreed in the council that "forasmuch as the king's majesty had need presently of a mass of money, therefore commissions should be addressed into all shires of England to take into the king's hands such church plate as remaineth to be employed unto his highness' use." The first commissioners for the plate and goods were sent out in the spring of 1552;²⁶ they were followed by others, who, still busy in the spring of 1553, were urged by the council to greater speed.²⁷ From "church plate superfluous" being coined, it was estimated that £20,000 would be

²² *Journal of Edward VI*, 62.

²³ *Literary Remains*, II, 543. Memorandum in the king's own hand, entitled, "Matters for the council, October 3, 1552. How a mass of money may be gotten to discharge the sum of £300,000 both for discharge of debts, and also to get £50,000 of treasure money for all events."

²⁴ *Acts of the Privy Council*, n. s., IV, 108; *Literary Remains*, II, 543. £49,133 was received from the sale of such goods, 1552-1553, *Augmentations Office, Treasurer's Roll of Accounts*, no. 8.

²⁵ *State Papers, Domestic, Edward VI*, VI, 25.

²⁶ *Acts of the Privy Council*, n. s., III, 228, 223, 467, 536; *Journal of Edward VI*, 65.

²⁷ *Acts of the Privy Council*, n. s., IV, 219, 265, 270. For volumes of the reports of the commissioners detailing their activities, and sometimes excusing themselves for not being able to do more for the king's advantage and other interesting comments, see B. M. Stowe Mss., Vols. 147, 827. The bulk of the reports is in the Records Office; those of certain counties have been published. The best general account is in Dixon, *History of the Church of England*, III, 448ff.

realized and from the sale of church goods £10,772 was received.²⁸ Other developments however returned some of the plate to the churches in Mary's reign. Finally in their quest for money, the council turned to the mint.

For many years the mint had been the great recourse of the government in times of storm and stress. The evils of the debasement of the coinage, the exportation of all the good money, especially the gold in the country, and the adverse foreign exchange, together with the effect of the debasement on prices, were by now clearly recognized by writers, merchants, and the popular preachers.²⁹ Even the council was convinced of the necessity of restoring the standard of the fineness of the coins. The first necessary step in doing this, as Lane, the London merchant, had pointed out to Cecil, was the "calling down" of the value of the testoun, groat and penny to their intrinsic silver-content value. This was first considered in the council in April, 1551. But fatuously enough, it was decided that there should be one last orgy of debasement before the proclamations for calling down were issued, "to get gains of £160,000 clear by which the debt of the realm might be paid, the country defended from any sudden attempt, and *the coin amended*." And so "for the discharge of debts and to get some treasure to be able to alter all," that is to meet the expenses of altering and bettering the standard, twenty thousand pounds weight of bullion was ordered to be coined three ounces of silver and nine ounces of alloy.³⁰ But before two months were out, the misgivings of the council were such that it was decided not to proceed after £80,000 of money of the standard of three ounces fine together with ten thousand marks weight of four ounces fine had been coined. But because of the changes in the fortifications at Calais and Berwick,

²⁸ *Literary Remains*, II, 550, Edward's memorandum; *R. O., State Papers, Domestic, Edward VI*, XV, 42, a paper by Cecil; *Declared Accounts, Pipe Office*, 2080.

²⁹ *Cotton, Mss., Vesperian D.*, 18, papers of William Thomas, clerk of the council; *State Papers, Domestic, Edward V*, XIII, 3, a letter of William Lane, merchant of London, to William Cecil, January 18, 1551. This letter is printed by Froude, *History of England*, V, 266. Latimer, *Sermons*, (Parker Society), 68, 95, 136, 137; John Hales, *A Discourse of the Commonwealth of this Realm of England*, (Edition of 1892), 104.

³⁰ *Journal of Edward VI*, 33, April 10, 1551.

it was agreed three weeks later to issue another £40,000 of a standard of three ounces fine while five thousand pounds weight of silver should be coined seven ounces fine at least.³¹ Thus the council vacillated between regard for the opinion of the people, and need for money. In July the mints were ordered to stop coining,³² not however until £114,500 had been taken from the people of England in the profits of the recent debasement.³³ In September, 1551, the council directed the mints to begin the coinage of good money of the standard of eleven ounces and one pennyweight of silver and nineteen pennyweights of alloy. A month later when the new coinage was actually being issued, the council ordered the lord chancellor "to haste forth the proclamation of the coin for the satisfaction of the people." This last clause probably carries the explanation of why the council did not dare to issue any more debased money, although in the spring of 1552 the project was reconsidered.³⁴

From all these sources large sums were received, but practically everything that came in from them was used for current charges in Ireland, at Berwick and Calais, and for the fleet and ordnance. But little was available for the payment of the bonds held in Flanders by the Fuggers and the Sheetz. In March, 1551, the Fuggers renewed a bond and accepted new obligations, provided that the king purchase bullion and jewels.³⁵ When the time for first payment of the new bonds came, Sir Philip Hobbey took £53,500 Flemish in French crowns over seas with him — probably the last remaining portion of the Boulogne ransom money, — but had to borrow £10,000 Flemish of Lazarus Tucher at seven per cent for six months to make up the pay. At the end of April, 1552, £14,000 additional was due the Fuggers, which was paid possibly by a new loan.³⁶ In May

³¹ *Ibid.*, 35, May 30; 37, June 18, 1551.

³² *Acts of the Privy Council*, n. s., III, 316, July 17, 1551.

³³ *Declared Accounts, Pipe Office*, 2079, account of Sir Edward Pekham, high treasurer of the mint.

³⁴ *State Papers, Domestic, Edward VI*, XIII, 47, directions for the new standard, Sept. 25, 1551. Between October and December, 1551, 6543 pounds weight of silver worth more than £21,000 were coined (*Declared Accounts, Pipe Office*, 2079). See also *Acts of the Privy Council*, n. s., III, 400; IV, 57, 102.

³⁵ See above, p. 186 note. See also, *Journal of Edward VI*, 33.

³⁶ *Ibid.*, 60, 62, 63, 65, 66; *Acts of the Privy Council*, n. s., IV, 27.

a debt of £6,180 Flemish due Jasper Sheetz was paid out of the money that came from the king's old debts.³⁷ But regarding another bond of £45,000 due to the Fuggers in May, 1552, "a letter was sent to the Foulcare," writes the king in his journal, "that I have paid £63,000 Flemish in February, and £14,000 in April, which came to £77,000 Flemish, which was a fair sum of money to be paid in one year, chiefly in this busy world, whereas it is most necessary to be had for princes. Besides this, that it was thought money should not now do him so much pleasure as at another time peradventure. Upon these considerations they had advised me to pay but £5,000 of the £45,500 I now owe and so put over the rest according to the old interest 14 per cent with which I desired him to take patience."³⁸ In August a bond for £56,600 fell due. Gresham, the government agent in Flanders, had no money to meet the payment; he secured an agreement for prolongation on the usual terms that the government purchase certain fustians and diamonds of the lenders. The council in Northumberland's absence refused the conditions. The king, Gresham was informed, would pay as soon as he could; until he did so the bankers must wait. Gresham insisted that the loan must not be defaulted, or the country would be brought to shame.

In the early summer months of 1552 the council register shows that the treasuries were often actually empty; in August payments by the government were actually suspended, "for that his highness is presently in Progress and resolved not to be troubled with payments until his return."³⁹ The acme of the crisis had come. It brought with it the failure of Northumberland's plan to seize the government. For at Michaelmas, 1552, the gens d'armes, the mercenary army which Northumberland had gathered in December, 1551, had to be disbanded for lack of money. Against money and metal, the weight of guns and mercenaries, Mary and her followers could not have raised up their heads. But without money, and hence without the mercenary soldiers, Northumberland had no chance against the divinity that doth hedge about a king, and the magic of the

³⁷ *Journal of Edward VI*, 68. *Acts of the Privy Council*, n. s., IV, 58.

³⁸ *Journal of Edward VI*, 66.

³⁹ *Acts of the Privy Council*, n. s., IV, 109, August 8, 1552.

Tudor name. With the discharge of the mercenaries Northumberland disarmed himself, and all possibilities of his success were gone.

In the summer of 1552 Northumberland probably expected a longer reprieve than he was to have before the test. The government was bankrupt, but if there was time enough all might still be mended. Rather bravely Northumberland attempted to retrieve the situation by the use of heroic measures. The management of the finances he turned over to William Cecil, who in later years was to become the greatest master of governmental finances of the sixteenth century.⁴⁰ The mayor and aldermen of the city of London endorsed the new loans in Flanders;⁴¹ the merchants of the Staple and the Merchant Adventurers advanced money to the government to meet its obligations, and took over the payment of loans as they fell due.⁴² In these days, too, the accounts of Northumberland's political opponents who had held important financial offices were investigated, and

⁴⁰ A note book of June and June and July, 1552, in Cecil's hand (*R. O. State Papers, Domestic, Edward VI*, XIV, 53), shows him very much interested in all government business, especially disbursements of money. In the following months there were many memoranda from his hand, showing the debts, with fruitful suggestions for amending the situation (*State Papers, Domestic, Edward VI*, XV, 13, 17, 42).

⁴¹ *Acts of the Privy Council*, n. s., IV, 29, 129, April and September, 1552.

⁴² In July the merchants of the Staple were desired by the council to advance by way of prest or loan some good portion of money besides the sums as should be due for the wool custom at this shipping. In October, in anticipation of the "pay" of £48,000 to be made in December "beyond seas" the Merchant Adventurers agreed to lend the king £40,000 repayable in March, 1553. The sum was assessed by the merchants upon themselves at the rate of 20s. for each cloth exported. It was estimated that at this shipping they would carry 40,000 broad cloths. The grant was confirmed by a "company" assembled of 300 Merchant Adventurers, October 4, 1552. A month later the Staplers agreed to take over a loan of £21,000 due to the Fuggers on February 15, 1553, paying £10,000 before the day, and the balance "on prorogation"—"for which they must pay the interest." In the spring of 1553 the Staplers and the Adventurers assumed responsibility for the payment of £43,771 due to the Fuggers, the Sheetz, the Rellingers and Francis van Hall (*Journal of Edward VI*, 80; *Acts of the Privy Council*, n. s., IV, 169, 267). Repayment was made to the merchants out of money from the land sales.

Beaumont, Whalley and Paget compelled to disgorge great sums. Northumberland contemplated going much further in these investigations, to discover whether the crown had been justly answered of the plate, lead and iron that belonged to the abbeys, the profit of alum, copper, and fustians appointed to be sold, and such land as Henry VIII had sold. He was minded to examine the accounts of the treasurers and receivers of the various revenue courts, and finally "to call on everyone who had received money in behalf of the crown since the year 1532 to produce his books and submit them to an audit."⁴³

The sale of crown lands, which had almost ceased since the making of peace with France, possibly out of the realization that sales and gifts could not proceed concurrently without ultimate disaster, was renewed on a larger scale than ever before in the reign. In May, July and October new commissions of sales were issued for the sale of chantry and other crown estates, together with rectories, parsonages, advowsons and other spiritualities.⁴⁴ Sir Edmund Pekham was appointed special treasurer to receive the money coming of the sales. In the year from Michaelmas, 1552 to Michaelmas 1553, he received £153,479 in purchase money, while £16,623 was paid into the Court of Augmentations.⁴⁵

These ways and means proving less effective than had been expected, the council began, in December, 1552, to plan for a parliamentary grant. Northumberland approved the action, "necessarily considering that there is none other remedy to bring his majesty out of the great debts wherein for one great part he was left by his highness father . . . , and augmented by the wilful government of the late Duke of Somerset, who took upon him the Protectorship and government of his own authority. His highness, by the prudence of his father, left in peace with all princes, suddenly, by that man's unskillful protectorship and less expert in government was plunged into wars whereby his majesty's charges were suddenly increased unto the

⁴³ *Journal of Edward VI*, 84. Froude, *History of England*, V, 425.

⁴⁴ *Acts of the Privy Council*, n. s., IV, 46, 133; Add. Mss., 5498, f. 29; *Journal of Edward VI*, 66.

⁴⁵ *Declared Accounts, Pipe Office*, 2080; *Augmentations Office, Treasurer's Roll of Accounts*, no. 8.

point of six or seven score thousand pounds a year over and above the charges for the keeping of Boulogne . . . These things being now so onerous and weighty to the king's majesty, and having all this while been put off by the best means we have been able to devise, although but slender shifts in comparison, the same is grown to such an extremity as without it be speedily helpen by your (the council's) wise heads both dishonor and peril may likely follow. And seeing there is none other honorable means to reduce these evils grown by the occasion afore rehearsed, I think there be no man that beareth his obedient duty to his sovereign lord and country but must of consequence conform himself to think this way (of a subsidy) most honorable; for the sale of lands you have proved, the seeking of every man's doings in office you mind to try, and yet you perceive all this cannot help to salve the sore." In the last sentence of the letter Northumberland refers to the "danger of murmuring or grudging that you (the council) mind to avoid."⁴⁶ The difficulty of the situation which made the council fear "murmuring and grudging" was that it was designed to ask a tax, which was preëminently a war measure, in a time of peace. The cloak of loyalty and patriotism could not be used to quiet opposition. The interests of the crown and the people, the unity of which was the foundation of the Tudor commonwealth, were not identical here and embarrassing questions might be asked concerning the new-gotten wealth of the chief ministers. One of the council busied himself with a book of "arguments and collections," apparently refuting all possible arguments against the new taxes, especially arguments based on references to the gifts of land by the council to themselves. Northumberland did not understand the new spirit of inquiry and liberalism which was in the air. He returned the book with part of his simple mind scribbled upon the margin. "There is no need to be so ceremonious as to imagine the objects of every forward person, but rather to burden their minds and hearts with the king's extreme debts and the necessity grown and risen by such occasions and means as cannot be denied by no man, and that we need not to seem to make a count to the commons of his majesty's liberality and bountifulness in aug-

⁴⁶ *State Papers, Domestic, Edward VI*, XV, 73, December 28, 1552.

menting or advancing of his nobles or of his benevolence showed to any his good servants lest you might thereby make them wanton and give them occasion to take hold of your own arguments. But as it shall become no subject to argue the matter so far, so if any should be so far out of reason, the matter will always answer itself with honor and reason to their confuting and shame." ⁴⁷

The grant demanded was the usual subsidy and two fifteenths and tenths; there was nothing "vast" about it. Yet such was the public temper, that even in the parliament of 1553, rather an assembly of notables than a representative body, the measure was debated; the commons' journal notes "arguments" on two days, and a "consultation in the Star Chamber." ⁴⁸ Some further indication of the unpopularity of the tax may be gleaned from the rejoicing with which Mary's remission of the subsidy as one of her first acts was greeted. "There was a marvellous noise of rejoicing and giving the queen thanks in Chepeside by the people for the same." ⁴⁹ That the people of England in parliament gained control of the government by virtue of parliamentary control of taxation is often stated. But it must not be overlooked that control of the government by the people was possible of accomplishment only as the people recognized the government as belonging to them, and were willing to assume the burdens of the finances of the state. This was not yet true in the sixteenth century.

There was for Northumberland one salvation, not fifteenths and tenths and subsidies, but the last remaining endowments of the church, the bishops' estates. The last possible phase of the policy begun by Cromwell had in fact already been entered. In 1550 the newly founded bishopric of Westminster was dissolved and united to the see of London, which was forced to neutralize any advantages of the union by the surrender of various manors to the crown. In 1551, Ponet on his translation to Winchester alienated the whole of the patrimony of

⁴⁷ *State Papers, Domestic, Edward VI, XVIII, 6, January 14, 1553.*

⁴⁸ *Commons Journal, I, March 6-11, 1553.* The clergy also made a grant of six shillings in the pound of the value of their livings, payable in three years (*Statutes, 7 Edward VI, c. 12, 13*).

⁴⁹ *The Chronicle of Queen Jane and of Two Years of Queen Mary, (Camden Society), 48.*

the see to the crown for a fixed stipend of two thousand marks. In 1552 the see of Gloucester was dissolved, its estates annexed to the crown and its diocese to that of Worcester. True, the crown had profited little; most of the land acquired from bishops' estates had been at once regranted to courtiers. The great attack was begun in the parliament of 1553. A bill was passed for the division of the great diocese of Durham, with the spoliation of its lands for the benefit of the crown and Northumberland.⁵⁰

But before the Revolution could recoup itself by further development in the way of the Henrician and Cromwellian tradition of the increase of the crown estates at the expense of the church, and rearm itself against the reaction, the boy king died. His death came a little too soon for the success of Northumberland's plans.

⁵⁰ Dixon, *History of the Church of England*, III, 197-8, 274, 471, 511.

CHAPTER XVI

RECONSTRUCTION UNDER MARY, 1553-1558

"Sterility," writes Pollard, "was the conclusive note of Mary's reign." It was a "palpable failure." Yet one exception must be taken to Mr. Pollard's sweeping condemnation. In the matter of government finance there was a real and important advance, without which the work of Elizabeth could not have begun so auspiciously. Like spendthrifts wasting their capital funds, the late Henrician and Edwardian governments had reduced and alienated crown possessions and resources to tide over financial crises. What was left was now so carefully husbanded that it was made to serve the requirements of the state for another half century. This was the constructive work of Mary's government. The religious reaction which Mary personified made it impossible to go forward to those new developments of the Tudor policy which Northumberland was planning, and had already begun, the increase of the crown lands by the annexation of the estates of the bishops. The queen's intense devotion to the old church even led to the surrender of certain resources already in hand. But the sale of lands practically ceased, and for the sources of supply which remained, conservation and intensive cultivation to effect the utmost productivity were the keynotes.

Mary enjoyed initial advantages which her brother did not have when he began to rule. The kingdom was at peace, and not threatened with war. Boulogne with its great charges had fortunately been lost. The crown was not surrounded by a group of grasping councillors, bent on enriching themselves at the expense of the state. "It must also be considered," runs a memorandum of things to be done for the good of the realm, drawn up August 4, 1553, "that the expenses of the queen be so moderated as the crown be able to bear it and have wherewith

also to resist the enemy. And for this cause all such superfluous new charges as have of late crept in are to be taken away and the size of the household, the admiralty, ordinance, mint, Ireland, Calais, Berwick and other places reduced near the same charges that they were in the latter end of King Henry VIII."¹ The reduction of the extraordinary numbers in the armies and garrisons in Ireland, Calais and Berwick and the various forts in England was recommended and carried out. Shortly after, a special committee of the council was appointed to take general oversight of the advances for Calais, Berwick and Ireland, the North, Portsmouth, the Isle of Wight and "the Islands."² In Ireland alone the yearly charge which had been £42,000 in the last year of Edward VI's reign was reduced to £17,796 in the third year of Queen Mary.³ It was recommended too, that the charges in the household be reduced, after a study of the charges of the latter part of Henry VIII's reign, with "reasonable additions thereto." But a great reduction in the household charges was not effected. During the two first years of the reign they were greater than they had been in Edward's time, though after that they were considerably reduced.⁴ The expenses of the wardrobe continued very large, but were declared by a committee of the council to be satisfactory and not excessive.⁵

¹ *State Papers, Domestic, Mary, I, 5.*

² *State Papers, Domestic, Mary, I, 3; III, 31.*

³ *Add. Mss.*, 4,767, f. 160. Yearly charge anno 1 Mary £37,916; anno 2 Mary £38,542; anno 3 Mary £17,769. The charges rose slightly later to £20,375 for the army and £1,735 for fees and annuities in 1559. *Ibid.*, ff. 116, 126, 129.

⁴ *Declared Accounts, Pipe Office, 1795.* The charges for the year

1551-1552	were £55,791 (Edward)
1552-1553	£51,903 (Edward and Mary)
1553-1554	£62,640 (Mary)
1554-1555	£59,353 (Mary)
1555-1556	£52,866 (Mary)
1556-1557	£54,111 (Mary)
1557-1558	£36,208 (Mary)
1558-1559	£44,824 (Mary and Elizabeth)

⁵ *State Papers, Domestic, Mary, VI, 21.*

The expenses of the wardrobe for 1552-1553 were £ 5,373

1553-1554	12,307 (coronation included)
-----------	---------------------------------

1554-1555	6,121
-----------	-------

As a retrenchment measure the union of the various revenue courts had been considered in Edward VI's reign, and authorized by parliament.⁶ Mary's government at once turned its attention to the "new erected courts" and their "superfluous charges." Parliament passed a second empowering act, and on January 24, 1554, letters patent of the queen abolished the Court of Augmentations and the Court of the First Fruits and Tenths, and united them with the Exchequer. The measure might have been very reactionary in its effects, inasmuch as it aimed to restore completely the ancient course of the Exchequer, even to the use of the sheriffs as stewards of the crown lands. But there were permissive clauses in the letters patent which made it possible for the more modern system of the Augmentations Court to be continued for the administration of the crown lands in the Augmentations office of the Exchequer.

Another great economy was achieved in the matter of annuities and pensions. They were taken under consideration at the very beginning of the reign; it was found that annuities of £1,597 to Englishmen, and of £2,590 to strangers were granted during pleasure and might be stopped at once, while of the annuities paid from the monastic lands it was suspected that some had been fraudulently granted.⁷ The council advised in January, 1554, that no new grants of annuities or pensions be made; and although some new grants were made, notably to those who had helped the queen at Fremlingham and to the officers of the dissolved Courts of Augmentations and First Fruits and Tenths, the total payments for pensions and annuities

1555-1556	6,029
1556-1557	missing
1557-1558	6,220
1558-1559	9,220 (coronation included)

These items are taken from *Declared Accounts, Pipe Office, 1795, 3027 to 3032*.

The household and wardrobe took all the clear revenues of the Duchies of Lancaster and Cornwall, and the Court of Wards and Liveries in Mary's reign. What was still lacking to meet their charges was paid from the Exchequer.

⁶ *Statutes*, 7, Edward VI, c. 2. The General Surveyors and Augmentations had already been united, January 1, 1547.

⁷ *State Papers, Domestic, Mary*, I, 22.

decreased markedly. From Easter, 1557, to Easter, 1558, they were only £5,978 as compared with £20,000 a year in Edward's day.⁸

Yet the problem which confronted Mary's government could not be solved by economies and curtailments alone. The rise in prices, the advance in the standard of living, and the higher level of salaries led necessarily to an increase in the household and wardrobe charges and in the cost of the permanent military and naval establishments. With all the economies possible, the total government disbursements in normal years of peace were considerably greater than they had been in 1540, and constantly tended to rise. It was essential that the government's revenues be increased. The time was not yet ripe to use taxation regularly to supply the new funds. Nor could the depleted estates of the crown be augmented on a grand scale as in the past. Northumberland's attainder and execution restored some of the lands which he had so unjustly gathered into his hands. As a possible means of recovering more of the fraudulently alienated estates, an investigation was proposed of all exchanges or gifts of land granted since the death of Henry VIII,⁹ but nothing was done. Yet despite all the alienations of the past two decades, the crown estates were still absolutely very large, and if they could not be increased in extent, they could be made much more productive of revenue. That rise in prices which so increased the costs of running the state, increased also the potential value of the royal lands. Rents responded to the advance in prices of agricultural products, though the crown did not immediately, or automatically profit by the rise in rents. In 1555 the committee of the council appointed for lands and possessions thought it good that a survey be made of all the queen's possessions in every shire and hundred as the first step toward increasing her majesty's income; but on the next points the sub-committees entirely disagreed. One party favored the letting of all lands, possessions and manors to farm for twenty-one years, as in that way the revenue would be made more certain, and the expenses of stewards, bailiffs, auditors, surveyors and receivers much

⁸ *Exchequer of Receipt, Misc. Books*, 259, Issues of the Exchequer.

⁹ *State Papers, Domestic, Mary*, I, 5.

reduced.¹⁰ "Farming" the revenues was beginning to find the favor of experts; it was concurrently urged for the customs, where the "example of other kingdoms and dominions" showed how advantageous it was. The farming of the lands and manors was not, however, adopted. More careful attention was paid to the making of new leases, which were to be drawn up only by the officers of the courts; fines for entry seem to have been increased, and rents raised. The land revenues steadily increased throughout Mary's reign, and this increase continued without interruption in Elizabeth's time. The clear yield of the crown lands in the Court of Augmentations was £26,883 in the year 1552-1553, the last year of Edward VI and the first of Mary; in the year 1556-1557 the yield of the lands in the Augmentations office of the Exchequer was £47,723, and in the first year of Elizabeth £69,628.¹¹ In the Duchy of Lancaster the issues of crown lands show a similar, but smaller increase from £6,628 in the year 1552-1553, to £7,808 in the year 1558-1559.¹² The land revenues thus incremented again became the most important in the state.

But though land was the chief source of wealth in early Tudor times, investments were also taking other forms. Commercial wealth, especially the riches derived from foreign commerce had for a long time been rising to a more exalted place in the national economy. The healthy growth of trade, stimulated by Henry VII's fostering care had continued in his son's reign. In the latter years of Henry VIII however, the returns from the customs fluctuated, and in the time of Edward VI they declined.¹³ The prosperity of the trading classes was shown by their ability to purchase land in great quantities when the monastic and chantry properties were offered for sale. The prestige of English merchants abroad was so great that the

¹⁰*State Papers, Domestic, Mary*, VI, 22; Add. Mss., 12,504, ff. 164, 166; *Cotton, Mss.*; *Titus, B. IV. f. 135*.

¹¹*Augmentations Office Treasurer's Roll of Accounts*, no. 8; *Exchequer of Receipt, Declaration Books, Pells, I*; *Lands. Mss.*, 4, f. 182.

¹²*Duchy of Lancaster, Asscunts Various*, bundle VIII.

¹³The average receipts 1538-1539 to 1546-1547 were £40,120 (*Schanz, Englische Handelspolitik*, II, 12). The receipts in the year 1550-1551 were £23,386 in the ports of England, and £2,511 at Calais. The Calais customs were however, unusually small this year. In 1548-1549 they had been £6,752, and in 1549-1550 £4,164 (Add. Mss., 30,198).

credit of London merchants would secure loans in Flanders for which the credit of the king was not sufficient; their resources were again indicated by the ability of the Merchant Adventurers and the Merchants of the Staple to advance great sums to the king by way of loans. By the time of Edward VI the influence of the London merchants had become so great as to secure the revocation of the privileges of the Steelyard, and their confidence and initiative sufficient to lead them to undertake the beginning of the Muscovy Company in the voyage of Willoughby and Chancellor in 1553. These are all indications of a vigorous and increasing foreign trade in the middle of the sixteenth century. The decline in Edward's customs revenues meant not a decline in English trade, but a maladjustment of the revenue system. For this there were several causes. There was laxness and dishonesty in the custom houses and dues were not truly paid.¹⁴ More important than this, all dues were collected on the valuations of the national books of rates of 1536 and 1545, which were themselves the valuations fixed in the London book of 1507. With the rise in prices, these valuations no longer corresponded to the actual market prices of goods in the middle of the century. In the third place, articles like wool, on which the customs revenues were formerly very great were exported in smaller quantities, while the existing duties on commodities like cloth, beer and wine, in the increased exchange of which the growth of commerce consisted, were too low. As far as the official valuations were concerned the situation was clearly recognized by a royal commission in Edward VI's reign. Pointing out the discrepancy between the market price and the rated value, the commission declared it meet to take measures for the profit of this custom, and that additional returns from new valuations were necessary. A committee of the council studied the matter in Mary's reign, and reported: "It seems necessary that goods of all sorts are imported and exported and shall

¹⁴ *State Papers, Domestic, Mary*, XIII, 49, 50, charges of loss to the queen through fraudulent weighing of wools; *Historical Mss. Commission Reports, Hatfield Mss.*, I, 148, complaint of great funds in the custom house on the part of the customers and controllers, who are often in business for themselves. Cf. Dowell, *History of Taxes*, I, 180; Cunningham, *Growth of English Industry and Commerce*, I, 549.

be specified in a book with their true modern value, and that customs and subsidies (of tonnage and poundage) shall be paid according to the true value and quality of the same goods at these times.”¹⁵ On May 28, 1558, the new Book of Rates with modern valuations, based on recent inquiry was issued. It raised the older rates by approximately seventy-five per cent, on the average. The privy seal prefixed to this book of rates remedied the decrease in the customs caused by the falling off in the export of wool. Because “much less wool is shipped . . . and much more wool is made into cloth within our realm and carried out of the same in cloth by way of merchandise . . . and because the custom and subsidy of wool carried out of this realm in wool doth far exceed the custom and subsidy of so much wool after the rate clothed . . . we therefore minding in reasonable sort to maintain our customs as the most ancient and certain revenue of our crown . . . have assessed upon cloths to be carried forth by way of merchandise (new) rates for the customs and subsidy.”¹⁶ By this new duty upon cloth, called the Impost which replaced the former dues upon cloth, the cloth trade was made to contribute a fairer share to the necessities of the state. A few weeks before the issue of the new book of rates and the impost upon cloth the council had laid similar imposts upon the wines of France, and French dry wares imported, and upon beer exported.¹⁷ The increase brought by the new valuations, the new duties and the greater strictness in the custom houses which the council enjoined, was immediate. From £25,900 in 1550-1551 and £29,315 in the fourth year of Mary’s reign, the customs revenues rose to £82,797 in the first year of Queen Elizabeth, divided as follows, — old customs, £25,797; for the rate of wares newly appointed, £20,000; custom of the Staple, £4,000; new increase upon cloth, £26,000; new increase upon wines, £4,000; the custom of beer, £3,000.¹⁸ The new book of rates and the new duties or imposts were the second great contribution of Mary to a

¹⁵ Add. Mss., 30, 198; Gras, *Tudor Books of Rates*, 774; *State Papers, Domestic, Mary*, VI, 22; *Cotton, Mss.*; *Titus B.*, IV, f. 35.

¹⁶ *Lansd. Mss.*, 3, f. 143.

¹⁷ *Acts of the Privy Council*, n. s., VI. 305, April 17, 1558.

¹⁸ *Lansd. Mss.*, 4, f. 182; an estimate or report on the revenues for the year 1559-1560 prepared for Cecil, and annotated in his hand.

rehabilitation of the finances of the kingdom. As in the case of the lands, Elizabeth reaped the advantages of Mary's innovations. Elizabeth's councillors extended the new imposts to all wines, and reissued the Book of Rates at various times. The customs became of almost equal importance with the land revenues as the basis for national finance, just as commercial wealth was tending to greater equality with landed wealth.

But it must not be supposed that all was smooth sailing in the financial history of Mary's reign. The constructive policies were slow in their development. Throughout the reign the government needed money, for the support of the increased establishments, and in the last year for the war with France, which fortunately was quick and decisive. But crown lands were not sold, and the coinage of debased money was not resumed. The government depended chiefly upon loans and taxes to meet its exigent demands. The debts beyond seas had been decreased in the last months of Northumberland's administration, to £61,000 by midsummer 1553. This reduction had been effected by allowing the payments in the various government departments to fall very much further into arrears.¹⁹ Northumberland had been anxious to repay the Flanders loans, the debts of the realm abroad, possibly to strengthen his international position; Mary's council seems to have decided that it was better to pay the charges and expenditures of the state promptly, and to accept frankly, as necessary aids in doing this, further foreign loans, even at twelve and fourteen per cent, which the future could redeem. As in the latter part of Edward VI's reign, Sir Thomas Gresham was the general agent in Flanders for the loans. Between March 21, 1554, and July 31, 1557, he repaid forty-nine bonds, with the interest and brokerage charges of foreign bankers, together with certain sums due to the Staplers and Merchant Adventurers to the amount of £312,984 5s. 9d. He negotiated new loans, many of them prolongations of former loans to the value of £234,733 4s. 4d. The total interest and prolongation charges for the period were £31,224, which is possibly only a small part of the saving realized by the state by the prompt payment of its officers, servants, purveyors and

¹⁹ *State Papers, Domestic, Mary, I*, 14. The foreign debt is put at £72,000 at about the same time in another paper, *ibid.*, IV, 6.

other like creditors. For certain money, 300,750 ducats, raised by bills in Antwerp, he had to go to Spain. The money was delivered to him by the bankers of Medina de Rioseca and Medina del Campo at Seville; from Seville he had to carry it to the seaside packed in great boxes, some of which broke with a loss of 231 ducats, — which the commissioners refused to allow when his account was made before them. In his dealings such was “his wisdom,” as his declaration of account modestly phrases it, that he raised the value of English money in exchange to be of more value than the money of Flanders, two shillings in the pound in March and April 1554, one shilling in May 1557, and six pence in August 1555.²⁰

Though most of the loans were raised in Flanders, the queen occasionally called upon the city of London for advances. On the first Sunday of September, 1553, she demanded £20,000 of the city of London. The sum of £10,000 was actually advanced, and repaid within the month. In August, 1556, the city of London advanced £6,000. In March, 1558, after the loss of Calais the queen demanded a loan of 100,000 marks of the city, which was reduced to £20,150 12s. 1d. when it was paid. The queen pledged lands worth £1,007 10s. 7¼d. a year for repayment, and paid interest at twelve per cent, for the taking of which, contrary to the usury laws, the London alderman had to receive special licenses from the queen. The Merchant Adventurers were so “forward” and liberal at this time that the queen wrote them a special letter of thanks, promising them her special favor in any reasonable suits.²¹

The taxes of parliamentary grant used to eke out the crown resources were the subsidies, very similar to those of the latter period of Henry VIII's reign, and the fifteenths and tenths of the laity, and the subsidies of the clergy. In her first parliament the queen remitted the last subsidy granted to Edward VI, unpaid at his death. In 1555 a subsidy payable in 1556 and 1557 was granted by the laity, and a subsidy of six shillings in the pound by the clergy. Parliament was willing at this time

²⁰ *Declared Accounts, Pipe Office*, 18. The accounts of Gresham's transactions are continued in 23, 26.

²¹ Wriothsley, *Chronicle*, II, 100; *Acts of the Privy Council*, n. s., IV, 343, 353; V, 321; *State Papers, Domestic, Mary*, XIV, 83; XII, 66.

to make a further grant of two fifteenths and tenths which the queen was graciously contented to refuse with her thanks.²²

In January, 1558, as a war measure, a subsidy of one fifteenth and tenth were granted, besides a clerical subsidy of eight shillings in the pound. Of interest in connection with the subsidies of Mary's time is not the frequency with which they were asked, nor their yield, but the stiffening resistance of parliament to the taxes, and the insistence of the government on more exact and complete payment, with the punishment of those who sought to evade the taxes.²³

Near the end of the reign too, the century-old device of the forced loan, half arbitrary tax, and half loan, was revamped. In 1556 the richest subjects of the kingdom were called upon to lend the queen £100 apiece, to be repaid within a month of All Saints Day, (November 1), 1557.²⁴ In September, 1557, to raise money to repay the loan of the past year, and to supply other needed sums, a more elaborate loan was "practiced." Commissioners sat in every district, as in the case of a subsidy, and rated each man's value with the assistance of the subsidy books, and the testimony of neighbors. Having made the assessments, the commissioners were to collect the money, taking not under £10, nor more than 100 marks (£66 13s. 4d.). Those who firmly refused to pay without cause were to be cited before the council, as indeed many persons were. Certain counties, Derby, Chester, Lancashire, York and Nottingham were exempted from the loan, because of the service which they had "done us in the war amongst our enemies the Scots." The loan realized £109,267 0s. 4d.; of this £42,100 was used to repay the loan of 1556, and the rest was apparently used for the general purposes of the state, since the recovery of Calais was not immediately attempted. Though privy seals were given as receipts to those who had contributed, no promise of repayment was made as

²² *Commons' Journal*, I, 28, 31.

²³ The *Commons' Journal* notes "arguments" on the necessity of summoning members of the house before the queen in connection with each one of the grants of the reign. For insistence upon more complete and speedier payment of taxes, see *Acts of the Privy Council*, n. s., V, VI. The yields of the Marian subsidies are listed in the Appendix, *Subsidies*.

²⁴ *Cotton, Mss.; Cleopatra F.*, VI, f. 299, a privy seal for the loan.

in the previous year, and no repayment seems ever to have been made.²⁵

Note must be taken finally of the retrogressive steps in the financial history of Mary's time. These are closely connected with the political, and especially the religious situation; they proceed partly from the queen's sense of loyalty and gratitude to the church, partly from her sense of stern honor and exact justice. The confiscations and forfeits accruing to the crown by the ruin of her enemies, Mary balanced by restoration to name and lands of persons attainted by her father and brother.²⁶ She reërected the Hospital of St. John of Jerusalem, she restored the abbey of Westminster, and returned the monastic lands in Ireland to their original uses. She was even resolved to restore all the monastic lands in crown possession to the church, and actually ordered perfect declarations made and presented to this end. "She preferred the salvation of her soul to the maintenance of her imperial dignity, if it could not be furnished without such assistance." But the councillors would not take the necessary steps; their passive resistance defeated her purpose.²⁷ She was however, able to accomplish the surrender of the first fruits and tenths of the clergy, and the alienations of the rectories, parsonages, glebes, benefices inappropriate and other spiritual livings in the hands of the crown, though the bill for this purpose was bitterly opposed in parliament.²⁸ The surrender was made as a gift to the church, to be placed at the disposition of the Cardinal Pole, for the augmentation of the poor livings of the priests. The surrender of the first fruits and tenths alone would have been a dead loss to the royal revenues of something less than £25,000 a year. But the alienation was not so immediately serious as Mary's enemies in Elizabeth's reign and since have alleged. For the gift to the church carried with it the payment of pensions and corrodiés of the late monks, nuns and chantry priests to a very great sum. The pensions of

²⁵ *State Papers, Domestic, Mary*, XI, 44, 45, 46; XVI, 49; XIII, 36. The last is the account of Richard Wilbraham receiver-general of the loan.

²⁶ A paper in *State Papers, Domestic, Elizabeth*, I, 64, gives the value of lands restored to such persons as £9,799 a year.

²⁷ Dixon, *History of the Church of England*, IV, 359.

²⁸ The debates and arguments are noted in the *Commons' and Lords' Journals*.

the chantry priests alone were £11,147 a year;²⁹ the entire payments of this nature which were transferred with the gift were £44,861 in the year 1550-1551.³⁰ In time these pensions and charges would cease, and then there would be at the disposal of the church a goodly sum for the benefit of its most poorly paid priests, but it was eighteen months after the passage of the act of surrender before the fund sufficed to do more than pay the charges, and remit the tenths of the smallest livings. The net loss to the crown was not actually very great; before the pensions became markedly smaller than the gross value of the gift, it was resumed. The greatest and practically the only change which Elizabeth made in the financial policy of her sister and her sister's government was the revocation of the various restorations which Mary had made to the church; especially the repeal of the Act of 1555, and the resumption by the crown of the first fruits and tenths, and the spiritual livings.

Revenue, to paraphrase Burke a little, is the chief problem of the state, nay more, it is the State. This is certainly valid for fifteenth and sixteenth century England. A sufficient revenue was the insistent difficulty of Tudor statesmen. Their solution was circumstanced by two conditions, the determination of the crown after the humiliation of the fifteenth century to be independent, and the self interest of the middle classes, in whose alliance a large part of the king's power consisted, which made them reluctant to accept taxation as a method of governmental finance. The conquest of the feudal nobility was Henry VII's greatest opportunity to increase the resources of his crown by stripping them of their wealth and estates, thus providing a revenue for the state on the basis of landed estates, independent of control, and satisfactory to the middle classes. Cromwell furthered his work by the seizure of a large part of the property and wealth of the church. At a time when their system was on the point of disintegration, Mary and her advisers were strong and capable enough to gather together the remaining resources, and so conserve, husband, and increase their productivity by raising the rents of the crown lands, and by issuing a new book of rates for customs, and levying new im-

²⁹ *Historical Mss. Commission Reports, Hatfield Mss.*, I, 75.

³⁰ *Add. Mss.*, 30,198.

posts, that with the careful parsimony of Elizabeth, reorganization was put off until the seventeenth century. When the necessity for a new financial system forced itself upon the Stuarts, they were too weak, and too incompetent to deal with it. The example of Holland, and the Long Parliament were necessary before it could be set up, and with it, the promise of the *Confirmatio Cartarum* realized.

All must acknowledge the titanic achievements of the early Tudors. It is axiomatic that their strong governments were needed in the England of their day to discipline the national life, and that their governments were strong largely because of their solid financial basis. Great recognition is due to the masterly way in which there were turned to the service of the state the greater economic unification of England and the chief forms of wealth of the time. It may even be granted that in some of their work the Tudors stood for real progress, especially in their destruction of the outworn vested control of the Exchequer over national finance. But care should be taken not to sanctify their success. For fundamentally they faced away from Liberty. The permanent success of their plans for securing income for the crown apart from the will of the people would have meant the end of freedom.

Fortunately, Henry VIII by his active foreign policy defeated these plans, and by his wastes and drains for war unwittingly made possible the revival of the representative control in England, after his father and himself had so nearly destroyed it. The miseries and wretched sufferings of the people of his own day may be the Vicarious Atonement by virtue of which in part, we in our day have salvation.

APPENDIX AND BIBLIOGRAPHICAL NOTES

TABLE I

TABLE OF COINS

Angel	=	Noble	6s. 8d.
Angelot			3s. 4d.
Crown, called the weighty crown or the crown of 40 sous			4s. to 4s. 4d.
Crown of the Sun, containing 38 sous			4s. 1d. to 4s. 6d.
Ducat			4s. 6d.
Ecu d'or	=	$\frac{1}{2}$ Crown	2s. to 2s. 3d.
Florin			2s. 2d.
Franc	=	20 sous Tournois	2s.
		50,000 francs = 26,315 sous Tournois	crowns of the sun + 30
Gulden of gold			2s. 10d.
Livre	=	$\frac{1}{2}$ crown	2s.
Mark	=	$\frac{2}{3}$ £ sterling	13s. 4d.
Nobel	=	$\frac{1}{3}$ £ steling	6s. 8d.
£ Flemish. The value varied according to the state of the exchange.			
It was worth about 15s. sterling near the end of Henry VIII's reign.			
Scudo			4s. 2d.

TABLE II

TOTAL EXPENDITURES IN THE EXCHEQUER

Year		Year	
1506	£43,259	1534	£37,106
1508	46,908	1536	37,234
1509	39,766	1537	38,246
1510	46,054	1538	38,279
1511	57,937	1540	20,200 ¹
1512	46,717	1542	30,402
1513	36,964	1543	26,443
1515	51,974	1545	116,584 ²
1516	50,745	1546	178,083
1517	34,517	1547	105,655
1519	52,306	1548	78,980
1520	46,421	1549	80,444
1521	45,387	1550	61,810
1523	34,786	1551	86,058
1524	32,467	1552	66,541
1525	38,506	1553	43,820
1526	34,174	1554	90,331 ³
1527	43,622	1555	151,100
1529	34,228	1556	246,274
1530	31,974	1557	293,152
1531	34,817	1558	334,340
1532	38,935	1559	230,975
1533	37,789		

¹ In this year a change is made in paying the assignments made to the Household.

² Subsidies are again expended by the Exchequer from this year onward.

³ In this year the Augmentations Court, and the Court of First Fruits and Tenths are merged with the Exchequer.

TABLE III

RECEIPTS OF THE COURT OF AUGMENTATIONS

For year ending at Michaelmas	Rents of lands in jurisdiction of the court	Sale of lands	Fines for leases	Sale of monas- tic goods, lead, bells, jewels
From April 1536 to to Michaelmas 1538	£ 27,732	£ 29,847	£1,006	£ 6,987
1539	24,223	80,621	468	3,213
1540		91,986		
1541		30,438		
1542	177,806	36,122	705	13,787
1543		105,332		
1544	44,945	164,495	1,196	1,046
1545	32,739	165,459	450	355
1546	59,255	72,826	388	5,441
1547	48,303	12,284	313	392
1548	51,058	112,969	374	3,107
1549	41,319	92,695	256	1,010
1550	32,082	47,286	1,411	4,891
1551	47,163	7,856	1,968	1,454
1552	47,400	5,104	585	4,456
From Michaelmas 1552		16,624		
to January 24, 1554	26,883	28,445	156	49,113

¹ This sum had been received in past years by the treasurers of the court for lands sold, and omitted, perhaps with fraudulent intent, from their accounts.

In addition to the sums listed above there were received between April 1536 and Michaelmas 1538 £5,948 in fines for permission for certain houses to continue; in the period 1539 to 1543 £6,553 in payment of the subsidy levied on monks' pensions, and £2,885 as a loan on the pensions; in the year ending Michaelmas 1544, £5,776 in fines for exemption from attending on the king, £12,970 in loans from ecclesiastical persons, and £22,616 from the sale of mortgages to the citizens of London. In 1545, 1546 and 1547 £4,900 was received in payment of debts owing to the various houses before their dissolution. In 1547 and the following years, there were paid into court considerable sums, representing the unexpended balances in the hands of the various royal agents at the time of the audit of their accounts.

This table is prepared from the *Treasurers' Rolls of Accounts, Augmentations Office*, nos. 1-10.

TABLE IV

ISSUES OR PAYMENTS OF THE COURT OF AUGMENTATIONS

Year	Fees of officials, messenger charges and other necessary exp.	Pensions to Monks	Annuities granted by houses before dissolution and payments by the decree of the court	Annuities granted by the king	Misc. payments on warrants of the council or king	Purchase of lands	Prests upon warrants
April 1536- Michaelmas 1538	£3,524	£ 448	£2,725	£ 261		£5,702	£ 14,618
Michaelmas 1538- Michaelmas 1539	1,135	1,422	1,706	673	£1,172	2,840	17,082
Michaelmas 1539- April, 1541	2,221	2,536	2,867	1,563			59,161
April 1541- April 1542	892	3,438	892	2,297	£5,329		47,901
April 1542- April 1543	1,129	3,765	1,567	1,535	7,804		64,624
April 1543- April 1544	1,109	3,466	3,219	1,516			143,037
April 1544- April 1545	1,278	3,706	6,111	1,763			207,527
April 1545- April 1546	1,120	4,081	16,810	1,926			136,753
April 1546- April 1547	1,023	4,463	2,605			117,982
January 27, 1547- Michaelmas 1547	*	*	*				29,926
Michaelmas 1547- Michaelmas 1548	2,680	3,407	4,567	9,013			165,155
Michaelmas 1548- Michaelmas 1549	2,641	3,536	3,737	8,420			99,531
Michaelmas 1549- Michaelmas 1550	2,907	3,364	6,054	8,203			81,821
Michaelmas 1550- Michaelmas 1551	2,626	2,939	3,388	5,536			33,191
Michaelmas 1551- Michaelmas 1552	6,040	5,400	3,463	15,097			54,052
Michaelmas 1552- January 23, 1554			1,790				24,152

TABLE IV (Contd)

Year	Payments to the King's officers	Composition of offices	Misc. payments	Total payments
April 1536-Michaelmas 1538	£20,581		£ 345	£ 48,247
Michaelmas 1538-Michaelmas 1539	36,397			63,088
Michaelmas 1539-April 1541	73,537			141,888
April 1541-April 1542	13,465			74,709
April 1542-April 1543	7,550			87,997
April 1543-April 1544			152,350
April 1544-April 1545	5,000			225,401
April 1545-April 1546	7,666			168,378
April 1546-April 1547	8,144		5,590 2	142,660
January 27, 1547-Michaelmas 1547		*		*
Michaelmas 1547-Michaelmas 1548		£3,489		184,475
Michaelmas 1548-Michaelmas 1549		1,627		133,721
Michaelmas 1549-Michaelmas 1550		3,932	6,748 3	112,579
Michaelmas 1550-Michaelmas 1551		3,912	1,460 4	53,183
Michaelmas 1551-Michaelmas 1552		6,074 }	18,388 4 }	130,935 }
Michaelmas 1552-January 23, 1554			9,409 5 }	

¹ Pension paid to officers of the general surveyors for the surrender of their offices on the dissolution of that court, January 1, 1547.

² For the repayment of the loans for ecclesiastics and others, of 1544.

³ Pension to "those wounded at Boulogne."

⁴ Allowance of arrears of rents.

⁵ Allowances made to various persons, for the money owing by them on the sale of lands and of lead, and for the delivery of money to the king's own hands.

* Indicates that the record is wanting.

This table is compiled from *Augmentations Office, Treasurer's Roll of Accounts*, nos. 1-10.

TABLE V

ANALYSIS OF THE "PRESTS UPON WARRANTS" OF THE AUGMENTATIONS
COURT FOR REIGNS OF EDWARD VI AND MARY

During the reign of Henry VIII these payments were almost exclusively for war purposes.

Year	Purchase of victu- als for army	Household	Wardrobe	Purchase of gold- smith's stuff	Diets of the council of Wales	King's private purse	Repayment of for- eign loans
January 27, 1547							
to Michaelmas 1547	£1,500	£1,000	£4,000				
to Michaelmas 1548	8,774	10,000	2,000	£ 58	£ 648	£300	
to Michaelmas 1549	4,955	7,872	4,000	98	648		19,180
to Michaelmas 1550				360	648	200	
to Michaelmas 1551	8,165	891		605	1,422		
to Michaelmas 1552	1,070	2,868	1,734	2,772	1,422		
Michaelmas 1552-January 23, 1554	500	2,153		33	1,699		

TABLE V (Contd)

Payment for the King's "own pur- poses," to Peter Osborne.	Payments to the Duke of Northumb- erland	Payment to Sir Ed- mund Peckham of the mint.	The Duke of Som- erset's diets	Buildings and forts	Treasurer of the Chamber	Diets of Prisoners in the tower	Fees of Ambassa- dors and rewards
				£3,303	£3,000		£ 510
				2,903	3,950	£ 100	9,174
		£3,693		914	8,229	666	858
				3,070	1,276	800	8,154
				5,261	808		9,087
£16,667	£2,000		£2,305	1,552	1,116	740	9,575
1,800		8,010		1,046	152	614	4,285

Also in the year 1552 £1,136 to the Master of the Revels.

TABLE VI

THE COURT OF FIRST FRUITS AND TENTHS

Receipts and Expenditures of the Treasurer of First Fruits and Tenths
January 1, 1535 to Christmas 1540. (*Landsdowne Mss.*, 156, ff. 137 ff.)

Receipts	First Fruits	1535.....	£ 14,034
		1536.....	21,221
		1537.....	13,385
		1538.....	17,654
		1539.....	13,987
		1540.....	9,794

Total 90,069

Tenths	1535.....	32,018
	1536.....	30,548
	1537.....	29,445
	1538.....	25,970
	1539.....	19,857
	1540.....	18,412

Total 156,251

Clerical subsidies, due Christmas, 1540

Canterbury	18,229
York	6,462
The Bishop of Lincoln's fine for escape of prisoners	700
Fines assessed by Cromwell	1,594
Vacations of bishoprics	2,394
Received from Cromwell and others by the King's express command for foreign employment at several times	130,711

Grand total 406,183

Expenditures

Fees and annuities	2,186
Foreign payments to ambassadors, messengers, purchases of land, redemption of mortgages, diets of prisoners and others of the king's special affairs	110,415
Rewards by special warrant	11,175
Allowances by warrants on the decrees of the Court of First Fruits	14,597

TABLE VI (Cont'd)

Delivered to the king's coffers	59,139	
"Monies" impressed by several warrants from the king for transporting soldiers, for the carriage of ordnance, and for public services	175,591	
<i>Total</i>	(sic)	374,069

The account for the year 1542. (*Landsdowne Mss.*, 156, f. 149).

Receipts	Arrears	32,034	
	First Fruits	12,298	
	Tenths	18,822	
	Clerical Subsidy	17,573	
	Miscellaneous	1,071	
<i>Total</i>			81,800

Expenditures

	Fees of the officers of the court	428	
	Foreign payments to the officers of the toils, for embroidery for the Great Wardrobe	6,936	
	Warrant dormant for the king's attorney, so- licitor, justices of assize, and justices at Westminster	1,887	
	Rewards	270	
	Miscellaneous	850	
	Imprests or advances to certain persons by special warrant for special services and building of bulwarks and making of forti- fications	16,156	
	Money delivered to the king's coffers	16,497	
<i>Total</i>			43,027
Arrears			38,772

The arrears represent those portions of the revenues which have fallen due, but have not been collected by the treasurer. They are carried over from year to year, and greatly inflate the accounts.

The account for the year 1543. (*Landsdowne Mss.*, 165, f. 150).

Receipts	Arrears	28,811
	Compositions for First Fruits	9,660
	Tenths	18,670

TABLE VI (Cont'd)

The Clerical Subsidy	18,444
Subsidy levied on pensions of monks	2,826
Foreign Receipts	39
<i>Total</i>	78,451
Expenditures	
Fees of the officers of the court	428
Foreign payments as in the past year, with the addition of the name of Sir Richard Rich, Treasurer of War	5,486
Payments by warrants dormant as in the past year, with £3,000 additional to the house- hold and other additions	8,833
Purchase of necessities of the court	393
Payments by special warrant of the king to Wriothesley and Rich, Treasurers of War, and to Richard Hygham for transportation of money and soldiers	36,393
<i>Total</i>	55,073
Arrears	23,346
The account for the year 1544. (<i>Landsdowne Mss.</i> , 156, f. 147).	
Receipts	
Arrears	23,356
Composition of First Fruits	9,695
Tenths	18,206
Subsidy of the clergy	17,807
Subsidy of pensions	2,810
Foreign receipts	100
<i>Total</i>	71,945
Expenditures	
Fees of the officers of the court	428
Warrant dormant, as in previous year	8,863
Necessary expenses of the court	449
Rewards by warrant of the Council	694
Money delivered for provisions for the king's army at Boulogne	37,350
<i>Total</i>	67,703
Arrears	4,220

During this year Gostwick, the Treasurer of the court declared that he had paid out £15,773 more than he had received, and that the unpaid arrears were £19,994.

TABLE VI (Cont'd)

The account for the year 1548. (*Landsdowne Mss.*, 156, f. 164).

Receipts	Arrears	37,457
	Compositions for First Fruits	5,209
	Tenants	14,203
<i>Total</i>		56,869

Expenditures

Fees of the officers of the court	428
Paid to the Judges, and to Lady Anne of Cleves	2,542
Paid on warrants of the Council	1,479
Necessary expenses of the court	396
For discharge of Issues and Arrearages upon certificates of bishops as well by decrees of this court as otherwise	1,125
Rewards	497
Money imprested by virtue of letters from the Council	14,970

<i>Total.</i>	21,438
Arrears	35,431

The account from Christmas 1553 to December 31, 1557 (*Accounts, Exchequer, Q. R.*, 520/28).

Receipts	Composition of First Fruits for the year 1554	28,368
	Same, year 1555	5,793
	Same, year 1556	1,120
	Same, year 1557	1,243
	Clerical subsidy, anno 1 Mary	1,399
	Clerical subsidy, 1 and 2 Philip and Mary	1,302
	Clerical subsidy, 2 and 3 Philip and Mary	1,164
	Foreign Receipts	36

<i>Total</i>	67,336
--------------	--------

Expenditures

Exoneration of First Fruits both by writ of the King and Queen, under the Privy Seal, as by decision of the Barons of the Exchequer	14,705
Money delivered into the Exchequer	40,230

<i>Total</i>	54,935
Arrears carried over	12,401

TABLE VII

SUBSIDIES AND FIFTEENTHS AND TENTHS

Two fifteenths and tenths granted 1487, to be paid in 1488 and 1489	£61,560
The subsidy of ten thousand archers, granted in 1489	27,000
One fifteenth and one tenth granted in 1489	20,830
Two fifteenths and tenths granted in 1491	53,360
Two fifteenths and tenths granted in 1497	55,104
The subsidy granted in 1497 (record of first half only)	29,850
The aid granted in 1504	31,300
The first fifteenth and tenth granted in February, 1512	28,878
The second fifteenths and tenth granted in February, 1512	27,769
One fifteenth and tenth granted November, 1512	29,408
The poll-tax of November 1512	32,814
The tax of £160,000	48,085
The tax of £110,000	45,637
The subsidy of November 1515	41,663
The subsidy of 1523	
The first payment, paid February, 1524, with the Anticipation, paid November 1523	71,788
The second payment, February 1525	66,064
The third payment, February 1526	4,686
The fourth payment, February 1527	9,031
The subsidy granted in 1534	
The first payment due November 6, 1535	21,280
The second payment due November 6, 1536	22,526
Two fifteenths and tenths granted in 1534	
The first fifteenth and tenth due November 6, 1537	33,270
The payment of the second fifteenth and tenth of this grant is not enrolled in the Subsidy Rolls	
The subsidy granted 1540	
The first payment due February 4, 1541	46,413
The second payment due February 4, 1542	48,047
Four fifteenths granted 1540	
The first fifteenth and tenth due February 4, 1541	29,558
The second fifteenth and tenth due February 4, 1542	29,507
The third fifteenth and tenth due February 4, 1543	29,287
The fourth fifteenth and tenth due February 4, 1544	29,125
The subsidy granted 1543	
The first payment due February 6, 1544	75,080
The second payment due February 6, 1545	56,052
The third payment due February 6, 1546	52,139
The subsidy granted 1545	
The first payment due April 1546	105,766

TABLE VII (Cont'd)

The second payment due April 1547	91,244
Two fifteenths and tenths granted 1545	
The first fifteenth and tenth due June 30, 1546	29,539
The second fifteenth and tenth due June 30, 1547	29,156
The relief granted to Edward VI in 1548	
The first payment due May 1549	53,889
The second payment due April 1550	47,449
The third payment due April 1551	39,855
The fourth payment due April 1552	43,261
Two fifteenths and tenths granted to Edward VI in 1553 and paid in Mary's reign	58,000
The subsidy granted to Edward VI in 1553 was remitted by Queen Mary	
The subsidy granted to Mary in 1555	
The first payment due March 1556	67,983
The second payment due May 1557	76,795
The subsidy granted to Mary to be paid in June 1558	134,445
The fifteenth and tenth granted to Mary in 1558, to be paid in November 1558	29,000
The records of these payments are found in <i>L. T. R. Enrolled Accounts, Subsidies</i> , rolls 36 to 44.	

TABLE VIII

CLERICAL SUBSIDIES

The disme or tenth granted by the clergy of Canterbury in 1487	£ 8,280
Two dismes granted by the clergy of Canterbury in 1491	15,520
Disme granted by the clergy of Canterbury in 1495	8,550
The Subsidy of £40,000 granted by the clergy of Canterbury in 1497	30,630
The grant of £25,000 made by the clergy of Canterbury in 1489, and the grants made by the clergy of York are not enrolled in the Subsidy Rolls. One disme of the province of York granted by the clergy of York to the Pope in 1501 yielded £1,420, and the first half of the disme granted there in 1504 brought in £677 14s. 6d. (<i>Accounts, Exchequer, Q. R.</i> , 413/2, volume III, ff. 45, 56, 79, 117). The value of the disme in the province of York may therefore be taken as £1,400 during Henry VII's reign.	
Four dismes granted by the clergy of Canterbury in 1512	
The first disme	11,021
The second disme	11,889
The third disme	11,590
The fourth disme	11,326
Two dismes granted by the clergy of Canterbury in 1515	
The first disme	10,951
The second disme	9,613
Three dismes granted by the clergy of York in 1512	
The first disme	1,228
The second disme	1,490
The third disme	1,482
Two dismes granted by the clergy of York in 1516	
The first disme	1,493
The second disme	1,435
The tax of 1523	120,000
The fine for praemunire in 1531 was paid to Cromwell who later seems to have turned over the unexpended portion of this money to the new Treasurer of First Fruits and Tenths. After this until Mary's reign all clerical subsidies were paid to the Treasurer of First Fruits and Tenths, and are found recorded in his accounts. After 1555 the clerical subsidies are again separately recorded.	
A subsidy of six shillings in the pound of the value of their benefices granted by the clergy in 1555	
The first payment due in October 1556	14,078
The second payment due in October 1557	13,145
The third payment due in October 1558 (estimated)	14,000
A subsidy of eight shillings in the pound of the value of their benefices granted by the clergy in 1558 to Mary	

TABLE VIII (Cont'd)

Estimated yield, in four payments, due in March 1558, 1559,
1560 and 1561 56,000

The accounts from which these figures are worked out are *Exchequer, L. T. R. Enrolled Accounts, Sibsidy Rolls*, 37, 40; *Accounts, Exchequer, Q. R.*, 57/4, 8; *Letters and Papers*, III, 2483; *Landsdowne Mss.*, 4, ff. 8, ff.

BIBLIOGRAPHICAL NOTES

A. PRINTED MATERIAL

I. General Works

1. General Background

CUNNINGHAM, WILLIAM, *The Growth of English Industry and Commerce* (5th edition, Cambridge, 1910-1912). 3 volumes.

DOWELL, STEPHEN, *A History of Taxation and Taxes in England from the times to the present day* (London 1884). 4 volumes.

2. Pre-Tudor History.

RAMSAY, JAMES HENRY, *Lancaster and York: a century of English History* (Oxford 1892). 2 volumes

3. Tudor History, 1485-1558

BACON, FRANCIS, *The History of the Reign of Henry VII* (edited by J. R. Lumby, Cambridge, 1876).

BUSCH, WILHELM, *England unter den Tudors: volume I, König Heinrich VII* (Stuttgart, 1892).

CREIGHTON, MANDELL, *Cardinal Wolsey* (London, 1888).

DEPUY, ANT., *Historie de la Reunion de La Bretagne a la France*.

FISHER, HERBERT A. L., *The History of England from the Accession of Henry VII to the Death of Henry VIII, 1485-1547* (London 1906).

FROUDE, J. A., *History of England from the Fall of Wolsey to the Death of Elizabeth* (New York, 1875-1878). 12 volumes.

GAIRDNER, JAMES, *Henry the Seventh* (London, 1889).

POLLARD, A. F., *England under Protector Somerset* (London 1900)

POLLARD, A. F., *The History of England from the Accession of Edward VI to the death of Elizabeth* (London, 1910).

4. The Coinage

OMAN, C. W. C., *The Tudors and the Currency, Transactions of the Royal Historical Society new series*, IX.

5. The Customs

GRAS, N. S. B., *Tudor "Books of Rates," a chapter in the History of the English Customs, Quarterly Journal of Economics*, XXVI, 766-775.

The Origin of the National Customs Revenue of England, Quarterly Journal of Economics, XXVII, 107-149.

SCHANZ, GEORG, *Englische Handelspolitik gegen Ende des Mittelalters mit besonderer Berücksichtigung des Zeitalters der beiden ersten Tudors, Heinrich VII und Heinrich VIII*, (Leipzig, 1881). 2 volumes.

6. *The Monasteries and their Dissolution*

DIXON, RICHARD W., *History of the Church of England from the Abolition of the Roman Jurisdiction* (London, 1878-1902). 6 volumes.

GAIRDNER, JAMES, *Lollardy and the Reformation in England: a historical Survey*, (London 1908-1913). 4 volumes.

GASQUET, FRANCIS AIDAN, *Henry VIII and the English Monasteries* (London, 1906).

JESSOP, AUGUSTUS, *Comperta of Norfolk, Norfolk Antiquarian Miscellany*, II 434ff.

SAVINE, ALEXANDER, *English Monasteries on the Eve of the Dissolution* (Oxford, 1909). A valuable study of monastic economy in 1535, based on the returns of the assessment of the value of all benefices made in 1535, preserved in the Valor Ecclesiasticus.

SPELMAN, HENRY, *The History of Fate and Sacrilege, discovered by Example* (London edition of 1853).

7. *The Navy*

OPPENHEIM, H., *A History of the Administration of the Royal Navy and Merchant Shipping in relation to the Navy, 1506-1600* (London, 1897). An able study based on research in the Public Records Office.

II. Chronicles, Contemporary Biographies, and other Contemporary Books

1. *Chronicles*

Brief London Chronicle during the Reigns of Henry VII and Henry VIII, edited by C. Hopper. Camden Miscellany, IV, 1859. (London, 1859).

Chronicle of Calais in the Reigns of Henry VII and Henry VIII to the Year 1540, edited by J. G. Nicholas. Camden Society, XXXV (London, 1846).

The Chronicle of the Grey Friars of London, edited by J. G. Nicholas, Camden Society, LIII (London, 1852).

Three Fifteenth Century Chronicles with Historical Memoranda by J. Stowe, edited by James Gairdner. Camden Society, new series XXVIII (London, 1880).

Two London Chronicles in the Collection of Stowe, edited by C. L. Kingsford. Camden Miscellany, 3rd series, XVIII (London, 1910).

All the above chronicles are very brief and often yield only a single item of value for the purpose of this essay. Of greater importance are:

Chronicles of London, edited by C. L. Kingsford (Oxford, 1905). Referred to as Kingsford's Chronicles.

ARNOLD, RICHARD, *The Customs of London* (London, 1811).

FABYAN, ROBERT, *The New Chronicle of England and France*, edited by Henry Ellis (London, 1811).

GRAFTON, RICHARD, *Chronicle or History of England* (London, 1809). 2 volumes. Grafton appropriated much directly from Hall.

HALL, EDWARD, *Chronicle containing the History of England during the Reign of Henry IV and the succeeding Monarchs to the end of the Reign of Henry VIII*, edited by Henry Ellis (London, 1809).

The chapters dealing with the reign of Henry VIII have been printed in two volumes edited by Charles Whibley in the series of *Lives of the Kings* (London, 1904). The references for the reign of Henry VIII are in the 1904 edition. Hall was bent on glorifying the Tudor house, and this tendency of his must be kept in mind in using his chronicle.

STOWE, JOHN, *A Survey of London*, edited by C. L. Kingsford (Oxford, 1908). 2 volumes.

The Annales or General Chronicle of England (London, 1615).

VERGIlius, POLYDORUS, *Anglicae Historie libri viginti septem* (Basel, 1651).

WRIOTHESLEY, CHARLES, *A Chronicle of England during the reigns of the Tudors, from 1485 to 1559*, edited by W. B. Hamilton. Camden Society, new series XXI, XXII (London, 1875-1877).

2. Biographies

CAVENDISH, GEORGE, *The Life of Cardinal Wolsey*, edited by W. S. Singer (London, 1825). 2 volumes.

ROPER, WILLIAM, *The Mirror of Vertue in Worldly Greatness, or the Life of Sir Thomas More* (London, 1902).

3. Contemporary Books

COTTON, ROBERT BRUCE, *A Discourse of Foreign War* (London, 1690).

DUDLEY, EDMUND, *The Tree of the Commonwealth*. This little tract was written in the Tower, 1509-1510, and was addressed to Henry VIII. It was printed by the Rosacrucian Society (Manchester, 1859).

FORTESCUE, JOHN, *Works*, collected by T. F. Lord Clermont (London, 1869). 2 volumes. Sir John Fortescue was chief justice of the king's bench and chancellor to Henry VI. His works are important expositions of the economic theories of his day.

LATIMER, HUGH, Bishop of Worcester, *Sermons and Remains*, Parker Society (London, 1884). 2 volumes.

EDWARD VI, *Literary Remains*, Roxburghe Club, (1857). 2 volumes. The Journal of Edward VI which the young king kept for himself, has been separately printed in the Clarendon Historical Society Reprints, 1884.

THOMAS, WILLIAM, *The Pilgrim, A Dialogue on the Life and Actions of King Henry VIII*, edited by James A. Froude (London, 1861).

Thomas was clerk of the Council of Edward VI. The book is a defence of Henry VIII's religious policy.

VERGIlius, POLYDORUS, *A relation, or rather true account of the Island of England*, translated from the Italian with the original text, by Charlotte Augusta Sneyd. Camden Society, XXXVII (London, 1847). Vergil was especially interested in the finances of Henry VII, and he wrote a full account of the revenues and expenses of the English king about 1500. His figures, however, are not very accurate when compared with the actual account books of Henry VII.

III. Printed Documents and Calendars

1. *Special Collections of Documents*

ASTLE, THOMAS, *The Will of Henry VII* (London, 1775).

BROWN, RAWDON, *Four Years at the Court of Henry VIII* (London, 1854). This book was made up of the dispatches of Sebastian Guistiniani, Venetian Ambassador in England from 1515 to 1519, translated from the originals in Venice by Mr. Brown. These dispatches are invaluable for the period which they cover.

CAMPBELL, W., *Materials for a History of the Reign of Henry VII*. Rolls Series (London, 1873-1877). 2 volumes. Many valuable extracts from account books, the patent rolls, and other records of the first four years of Henry VII's reign.

GAIRDNER, JAMES, *Memorials of King Henry VII*. Rolls Series (London, 1858).

Letters and Papers illustrative of the Reigns of Richard III and Henry VII. Rolls Series (London, 1861-1863). 2 volumes.

JESSOP, AUGUSTUS, *Visitations of the Diocese of Norwich*. Camden Society, new series, XLIII (London, 1888).

MERRIMAN, ROGER B., *Life and Letters of Thomas Cromwell* (Oxford, 1902). 2 volumes. The text of the letters is preceded by a brilliantly written essay on the work of Cromwell, which has been of great assistance in the writing of this study.

RYMER, THOMAS, (and Sanderson, Robert); *Foedera, Conventiones, Litterae et cuiusque generis Acta Publica* (London, 1704 to 1725). 20 volumes.

STAPELTON, THOMAS, *Plumpton Correspondence*, a series of letters written in the reigns of Edward IV, Richard III, Henry VII, Henry VIII. Camden Society, IV, (1839). These letters are one of the few sources hitherto used to throw light on the activity of Empson and Dudley.

WRIGHT, THOMAS, Three chapters of Letters dealing with the Suppression of the Monasteries. Camden Society, XXVI (London, 1843). All these letters are calendared in Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII, but the complete text is here given.

2. *Records of Parliament, Convocations and the Privy Council*

Rotuli Parliamentorum, 6 volumes and index.

The Statutes of the Realm (London, 1810-1819). 9 volumes and index.

Journals of the House of Lords, beginning anno primo Henrici Octavi.

Volume I covers the period 1509-1577. These records are of little value.

Commons Journals, beginning with the reign of Edward VI. Of little value.

Concilia Magnae Britanniae et Hiberniae, edited by David Wilkins (London, 1737). 4 volumes. In these volumes are printed the records of the Convocations of the English clergy.

Proceedings of the Privy Council of England, 1385-1542, edited by Sir Harris Nicholas. 7 volumes. Volume 7 contains the proceedings for the years 1540-1542, the two first years of the Tudor period for which the records are preserved (London, 1834-1837).

Acts of the Privy Council of England, new series, edited by John Roche Dasent (London, 1890-1907). 32 volumes. Volumes I-VI cover the reigns of Edward VI and Mary.

3. *Calendar*s

Reports of the Historical Manuscripts Commission. Scattered items are found in many of the volumes of these reports, but they have yielded less than might have been expected from material of such bulk. Detailed references to the volumes used are made in the foot-notes.

Calendar of Inquisitiones Post Mortem, Henry VII (London, 1898-1915). 2 volumes.

Calendar of Letters, Dispatches and State Papers relating to the Negotiations between England and Spain, edited by G. A. Bergenroth. Pascual Gyangos, M. A. S. Hume, and R. Tyler (London, 1866-1914). 10 volumes. Referred to as the Spanish Calendar.

Calendar of State Papers and Manuscripts existing in the Archives and Collections of Milan relating to England, edited by Allen B. Hinds (London, 1912). One volume only has appeared. Referred to as the Milanese Calendar.

Calendar of State Papers and Manuscripts relating to English affairs existing in the archives and collections of Venice and other places in Northern Italy, edited by Rawdon Brown (London, 1864-1890). 7 volumes. Referred to as the Venetian Calendar.

Calendar of the Carew Manuscripts preserved in the archiepiscopal library at Lambeth, edited by J. S. Brewer and Wm. Bullen (London, 1867). Volume I covers the period from 1515 to 1574. Referred to as the Carew Mss. This calendar deals chiefly with Irish affairs.

Calendar of State Papers, Domestic, edited by J. R. Lemon (London, 1857). Volume I covers the reigns of Edward VI and Mary, and the early part of the reign of Elizabeth. It is little more than a finding list, and the original documents in the Record Office must be used in all cases.

Calendar of State Papers, Ireland, 1509-1573, edited by H. C. Hamilton (London, 1860). Also little more than a finding list. Referred to as the Irish Calendar.

Calendar of the Patent Rolls, Henry VII, volumes I, II, 1485-1509 (London, 1914-1916).

Letters and Papers, Foreign and Domestic of the reign of Henry VIII, edited by J. S. Brewer, James Gairdner and R. H. Brodie (London, 1862-1907). 21 volumes. Referred to as the Letters and Papers. This is probably the best calendar of documents covering a large period ever made. Many documents however, relating to the reign of Henry VIII, dealing with the financial matters of the reign have been omitted, either because of their size, or because of lack of interest in financial history, or because they had not yet been uncovered at the time of the making of the calendar. For the general background, and for many details of the foreign and domestic policy the Letters and Papers have been a perfect mine, as the foot-note references show.

B. MANUSCRIPT MATERIAL IN THE BRITISH MUSEUM AND PUBLIC RECORD OFFICE, LONDON

In the Record Office, and in the great collections of the British Museum, especially the Landsdowne, Cottonian, Harleian Manuscripts and the additional manuscripts, many separate documents are found. These are too numerous to list, and are adequately referred to or described in the foot-note references. In addition to these separate documents, there are important series of accounts of the various revenue courts and officials.

I. Exchequer Accounts

EXCHEQUER, KING'S REMEMBRANCE, MEMORANDA ROLLS. The series is complete for the four reigns. These rolls contain letters directed to the Barons of the Exchequer, patents of grants, enrollments of suits in the Exchequer court, and brief views or synopses of the accounts presented at the Exchequer for audit. Lists of the names of the accountants are found in "Repertoires of States and Views," Record Office reference, Indexes 7025, 7026.

EXCHEQUER, LORD TREASURER'S REMEMBRANCE, ENROLLED ACCOUNTS.

- (a) *The Pipe Rolls*, on which the formal accounts of the sheriffs are enrolled. The series of Pipe Rolls is complete, but for the Tudor period they are of little importance.
- (b) *The Foreign Rolls*. These contain the accounts of all Exchequer receipts not enrolled in other rolls, and some accounts of expenditures. Rolls 119 and 120 cover the four reigns.
- (c) *Customs Rolls*, on which the accounts of the collectors of customs were enrolled.

- (d) *Subsidy Rolls*, on which the accounts of the collectors of the subsidies and fifteenths and tenths were enrolled. Rolls 36 to 44 cover the four reigns.
- (e) *Wardrobe Rolls*, on which were enrolled the accounts of the expenditures in the royal household and wardrobe. Roll 8 extends over the period 1485-1546, and Declared Accounts, Pipe Office, no. 1795 which should really be Roll 9 extends from 1546 to 1603.

EXCHEQUER OF RECEIPT

- (a) *Declarations of the State of the Treasury*. These are the declarations of the Chancellor of the Exchequer to the King, showing the receipts and disbursements of money in the Exchequer of Receipt. They extend from 1505 to 1551 in 27 volumes. Some of the declarations are misplaced, and others have found their way to the British Museum. These are Exchequer K. R. Misc. Books 69; Landsdowne Mss. 156 f. 124 (copy); Additional Mss. 33,376 and Additional Mss. 35183. There are also several duplicates in the British Museum, and three paper drafts in the Record Office, Exchequer of Receipt Misc. 392.
- (b) *Auditor's Declarations of Issues*. When the disbursements of Exchequer became more diversified after 1544, the clerk of the Chancellor, the auditor of the Receipt, drew up a paper supplementary to the Declarations of the State of the Treasury, showing the disbursements especially upon the warrants of the council, which were not included in them. A volume of these auditor's declarations of issues is preserved for the years 1544 to 1560, Exchequer of Receipt, Misc. 259, and is the only source for the most important Exchequer disbursements in these years.
- (c) *Declarations of the Clerk of the Pells*. In Queen Mary's time the declarations of the Chancellor were replaced by smaller declarations, made by the Clerk of the Pells. These show receipts only. One volume, for the years 1556, 1557, and Hillary term, 1558 is preserved, as Exchequer of Receipt, Declaration Books, Pells, volume I. For the reigns of Edward VI and Mary the best account of receipts is found in a condensed Jacobean copy of Exchequer receipts, from 1547 to 1555, among the Landsdowne Mss. Volume 156, ff. 168 ff.
- (d) *Receipt Rolls*. These rolls, formerly called the Pell Rolls, Auditor's Rolls and Treasurer's Rolls of Accounts form a triplicate series of all the receipts of the Exchequer of Receipt. They were written in the Court of Receipt by the Treasurer's Clerk for writing the Pell, and the two Clerks of the two Chamberlains for writing the Controllment of the Pell. Although rolls for practically every year of the four reigns are preserved, they are very imperfect for the early part of the reign of Henry VIII, where they would be of greatest value.

- (e) *Tellers' Rolls*. In these rolls are contained records of all the monies received by the tellers, and of all payments made by them, except payments made by assignment of tallies.
 - (f) *Miscellaneous Books*, 124, 125, 126, 131, and 254 et seq. are teller's paper account books, in which their first records were entered. The series is very fragmentary.
 - (g) *The History of, and the Practice followed in the Exchequer of Receipt*, Misc. Documents, bundle 396. In this bundle are many letters relating to a dispute between the Clerk for Writing the Tallies and the Clerk for Writing the Pell in the reign of Elizabeth, and from which the practice of the Exchequer of Receipt can be reconstructed, and certain developments traced.
- Fanshaw, Thomas; *The Practice of the Exchequer Court*, London, 1658. This very rare book, a copy of which is preserved in the British Museum, is listed here for convenience, in order to group it with other tracts which exist only in Manuscript. Fanshaw was King's Remembrancer of the Exchequer during the reign of Elizabeth, and he describes the practice of the court in his own time.
- Seventeenth Century treatises on the practice of the Exchequer are found *Additional Mss.* 38008; *Edgerton Mss.* 2436; *Additional Mss.* 36,107 and *Additional Mss.* 30,216.

II. The Court of First Fruits and Tenths

Jacobean copies of the accounts of the TREASURER OF THE FIRST FRUITS AND TENTHS from 1535 to 1544, and for the year 1548 are preserved in the *Landsdowne Mss.*, volume 156, ff. 137, ff. An original account book from Christmas 1544 to April 1545 is *Court of First Fruits and Tenths*, Misc. Books, 27. In 1554 the court was amalgamated with the Exchequer, and Remembrancers for First Fruits and Tenths conducted the former business of the court; their account for Mary's Reign is in *Exchequer, Queen's Remembrancer, Accounts* 520/28.

III. The Court of General Surveyors

DECLARATIONS OF THE ACCOUNTS OF THE GENERAL SURVEYORS. These are the formal statements of all the revenues received in the court, laid before the King or his Council. They are preserved for only a few years of the period, *Exchequer of Receipt, Misc. Books*, 212, 213, 253 for annis 19-22 Henry VII; *Rot. Reg. 14 B XI* in the British Museum for the year 1514-1515; *Additional Mss.* 32,469, for the year 1541-1542; and *Rentals and Surveys* 837, a special declaration of lands alienated and otherwise disposed of during the first six years of Henry VIII's reign.

MINISTER'S ACCOUNTS

Augmentations Office, Misc. Books, volume 273 et sequentia.

Exchequer, Treasury of Receipt, Misc. Books, volume 150 et sequentia.

BUTLERAGE ACCOUNTS

Accounts, Exchequer, Q. R., bundles 83 to 87.

Declared Accounts, Pipe Office, 454 et sequentia.

THE HANAPER ACCOUNTS

Accounts, Exchequer, Q. R., bundles 217-219.

Many of the accounts are enrolled in the *Foreign Rolls*, 119, 120.

PROCEDURE OF THE COURT

Accounts, Exchequer, Q. R., 517/10.

Augmentations Office, Misc. Books, 313A, 313B. These are rough minute books of the court.

IV. The Court of Wards and Liveries

ACCOUNTS OF THE RECEIVER GENERAL OF WARDS AND LIVERIES

Court of Wards, Misc. Books, volumes 361-367. These cover various years between 1533 and 1558.

Exchequer of Receipt, Misc. Books, volumes 247, 248 are the accounts of the clerk of Ward's lands from 1503 to 1507, when these lands were still under the jurisdiction of the General Surveyors.

V. The Duchy of Lancaster

ACCOUNTS OF THE RECEIVER GENERAL OF THE DUCHY, and formal declarations of the same official are found in *Duchy of Lancaster, Accounts Various*, bundles 6 and 8. For the latter years these accounts are very complete.

VI. The Treasurer of the Chamber

For the reign of Henry VII there are preserved both the RECEIPT BOOKS and the ISSUE BOOKS OF THE TREASURER OF THE CHAMBER. The receipt books, extending from 1487 to 1505, are *Accounts, Exchequer, Q. R.*, 413/2, I, II, III; 414/11; *Exchequer, Treasury of Receipt, Misc. Books*, volume 123. The issue books, extending from 1491 to the end of the reign are *Additional Mss.* 7099, a copy of the accounts for the years 1491 to 1505 which must be used for the period before 1495, since the originals can no longer be found; *Accounts, Exchequer, Q. R.*, 414/6, 16; 415/3; *Additional Mss.* 21,480; *Additional Mss.* 21,481; *Exchequer, Treasury of Receipt*, volumes 214, 215.

All these books are signed with the King's sign manual on practically every page. The pages in the back parts of these books contain most valuable notes on the management of the revenues, lists of the crown lands and lists of the obligations and recognizances due to the king.

For the reign of Henry VIII the account books of the Treasurer of the Chamber are well calendared in the Letters and Papers. The account book for the year 1547-1548 is printed in the *Trevelyan*

Papers, Camden Society Publications, LXVII, 191 ff. A declaration of his accounts from 1557 to 1579 is *Declared Accounts, Pipe Office*, 541.

VII. The Court of Augmentations

COMPOTI, OR DECLARATIONS OF THE TREASURER OF THE COURT OF AUGMENTATIONS. This series is complete from the establishment of the court in 1536 to its consolidation with the Exchequer in 1554. The Record Office call numbers are *Augmentations Office, Treasurer's Rolls of Accounts*, 1-10. In addition there are preserved many of the account books of the receiver-general of the court, from which these declarations were drawn up.

VIII. Mint Accounts

Accounts, Exchequer, Q. R., bundles 295, 296, 302; *Declared Accounts, Audit Office*, bundle 1595; *Declared Accounts, Pipe Office*, 2074, 2077, 2079, 2080. The last document is the account of Sir Edmund Pekham, High Treasurer of the Mints, from 1544 to 1550, containing the full account of the profits realized from the debasement of the coinage.

IX. Calais Accounts

ACCOUNTS OF THE WOOL CUSTOMS COLLECTED BY THE CALAIS STAPLE.
ACCOUNTS OF THE TREASURER OF CALAIS.

ACCOUNTS OF WORKS AND FORTIFICATIONS AT CALAIS.

Many of these accounts are enrolled in the *Foreign Rolls*. The originals are found in *Accounts, Exchequer, Q. R.*, bundles 201 to 207; *Duchy of Lancaster, Accounts Various*, bundle 2; *Declared Accounts, Pipe Office*, 530-535.

X. Special Declarations of Accounts before Committees of the King in Council

"BRIEF DECLARATION OF THE WHOLE MILITARY AND NAVAL EXPENSES INCURRED BY HENRY VIII AND EDWARD VI DURING THEIR WARS WITH FRANCE AND SCOTLAND," *State Papers, Domestic, Edward VI*, XV, no. 11.

"REGISTER OF ALL GIFTS, EXCHANGES AND PURCHASES OF CROWN LANDS IN EVERY YEAR OF KING EDWARD VI," *State Papers, Domestic, Edward VI*, XIX.

REPORT ON THE STATE OF ALL REVENUES FOR THE YEAR 1550-1551, WITH RECOMMENDATIONS FOR THE IMPROVEMENT OF THE REVENUES, *Additional Mss.*, 30,198.

LIST OF ALL THE FEES AND CHARGES OF THE GOVERNMENT IN EDWARD VI'S REIGN, *Stowe Mss.*, 571, no. 1.

INDEX

- Accounting, methods of, 61-77, 99,
180, 181, 192, 197, 198
- Act of Appeals, 105
- Allen, John, 70
- Amicable Grant, 95, 163
- Amiens, Treaty of, 101, 102 n
- Annuities and Pensions, 179, 192,
204-205
- Ap Rice, John, 118, 119, 120, 122
- Articles of inquiry and injunction,
118
- Assignments by Tallies, 63
- Audeley, James, seventh Baron, 26
- Audeley, Thomas, Baron of Walden,
124
- Austria, 110
- de Ayala, Pedro, Spanish Ambas-
sador in London, 60, 79
- Bacon, Francis, 24, 31, 37, 42, 53,
57, 86
- Beaumont, John, 181
- Bedford, Jasper, Duke of, 26
- Bedyll, Thomas, 118, 122
- Benevolences, 56, 57 n. See also
Forced Loans
- Berwick, 67, 74, 86, 142, 178, 189,
191, 194, 195, 203
- Bishoprics, plans for the suppres-
sion of, 200-202. See also 112,
113, 114
- Bollyngay, William, 70
- Book of Rates, 25, 207-208
- Boulogne, costs of maintainance,
1544-1550, 147, 156, 178, 182, 188,
202
- Bourbon, Duke of, 94
- Bourchier, John, 51
- Bowes, Martin, 180
- Bowes, Robert, 146-147, 190
- Bray, Reginald, 19, 26, 51, 52
- Buckingham, Edward Stafford, Duke
of, 99
- Burgevenny, Lord, 42, 43
- Buildings, expenditures on, 78 n, 104,
140 n
- Butlerage and Prisage, 69, 70
- Brittany, Duchy of, 54 f
- Calais, 34, 38, 40, 44-45, 51, 67, 74-
75, 86, 104, 106, 140, 142, 163,
178, 182, 188, 189, 191, 194, 195,
203, 211. See also Merchants of
the Staple
- Cambrai, Treaty of, 101
- Cambridge, University of, 35
- Camp, Treaty of, 158
- Capel, William, 35
- Carthusian Monks, 116, 126, 132
- Catesby, William, 21
- Cecil, William, 191 n, 194, 197
- Chancery, 28, 29. See also Hanaper
of Chancery
- Chantries, Confiscation of, 157, 182,
183
- Chapuys, Eustace, imperial ambas-
sador in England, 106, 112, 113,
114, 117, 118, 120, 121, 151, 152,
164, 167
- Charles V, emperor of the Holy
Roman Empire, 85, 90, 92, 95, 96,
100, 101, 102, 105, 116, 144 ff
- Charles VIII, king of France, 24,
56, 57
- Chester, Earldom of, 13, 21 n, 65
- Cheyne, Francis, 26
- Church plate and ornaments, 131,
156, 176, 193. See also Jewels of
monasteries and shrines
- Church property, restoration of, by
Mary, 212
- Church wealth confiscated by the
Tudors, general discussion, 108-

- 110, 113-116. See also Bishops, Chuntries, Church plate and ornaments, First Fruits and Tenths, Friaries, Knights of St. John, Monasteries, Praemunire, Shrines
- Clarence, Duke of, 12
- Clerical Tenths and Subsidies, 54, 93, 94, 112-113, 114, 137, 138, 150, 162-163, 184, 200 n, 210-211; value of 227-228
- Clifton, Gervis, 45
- Coinage, Debasement of, 154, 174 ff, 185-186, 194 f, 209
- Coins, value of, 215
- Convocations of Canterbury and York, 54, 94, 110-112, 113, 114 n, 150
- Conyers, Lord, 43
- Commercial Treaties of Henry VII, 24
- Cornburgh, Allen, 52
- Cornishmen, revolt of in 1497, 34, 58
- Cornwall, Duchy of, 13, 21, 23, 65, 67
- Cotton, Robert, 37, 38
- Court of Augmentations, expenditures in, 218-220, 237; receipts of, 139-140, 217; organization of, 130, 181
- Court of First Fruits and Tenths, 115, 137, 138-139, 235; receipts and expenditures in, 221-224
- Court of General Surveyors; organization and practice, 65-74, 235-236; revenues in, 90, 138. See also Treasurer of the Chamber
- Court of Wards, 138, 181, 236. See also Wardship and Marriage
- Cranmer, Thomas, 105, 131
- Cromwell, Thomas, 96 n, 103, 104, 106, 108, 113, 115-116, 117, 118, 119, 120, 127, 130, 132, 133, 137, 138, 140, 142, 147, 148 ff, 200, 213
- Crown lands, alienation and sale of, 131, 140, 148, 153, 156, 178, 179, 183, 198, 202, 205, 209, 217
- Crown lands, income from rent of; in fifteenth century, 12, 13; in Tudor period, 21, 25, 27, 82, 89, 90, 138, 139, 173 n, 205, 206
- Crown lands, increase of, 21, 25, 89, 99, 108-110. See also Nobility, estates of; Church wealth confiscated
- Customs Revenues and Subsidies, 11, 12, 20, 24-25, 34, 89, 103-104, 206-209. See also Tonnage and Poundage
- Dacre, Lord; eighth Baron, 43, 48; ninth Baron, 151
- Darcy; Lord Thomas, 43, 49; Lord George 190
- Daubeney Giles, 38, 42
- Daubeney, William, 25
- Daunce, John, 92
- Dawtry, John, 34, 38, 92
- Declarations of accounts, 76-77
- Declarations of the state of the Treasury, 64-65
- Declared accounts, 77 n.
- Denmark, 24, 145
- Devotion Money, 152, 165
- Derby, Thomas, Earl of, 43
- Devereux, Walter, 21
- Dimmock, Robert, 45
- "*Discourse of Foreign War*", 37
- The Divorce from Catharine of Aragon, 102, 105, 107
- Dorset, Thomas Grey, Marquis of, 51, 92
- Douche, Jasper, 167 ff.
- Dover, 104, 107, 114, 140, 142, 163
- Duchy of Lancaster, 12, 13, 21, 23, 26-27, 35, 65 n, 70, 71, 90, 138, 181, 236
- Dudley, Edmund, 29 n, 34 ff, 109
- Dudley, John, Duke of Northumberland, 191, 196, 197, 199, 205, 209
- Dynham, Lord, 52
- Edgecombe, Richard, 19

- Edward I, king of England, 11, 12
Edward II, king of England, 109
Edward III, king of England, 11, 184
Edward IV, king of England, 11 n, 12, 13, 15, 17, 21, 23, 51, 55, 56, 57
Edward V, king of England, 12
Edward VI, king of England, 179, 183, 192, 196, 201, 207, 210
Elizabeth, queen of Henry VII, 26, 52
Eltham, Statutes of, 99
The Empire, relations with France, 131, 144
The Empire, relation with England, 105, 116, 131; see also England, foreign relations.
Empson, Richard, 29 n, 34 ff.
England, foreign relations, 53, 54, 56, 58, 91 ff, 105, 116, 131, 144 ff, 178 ff, 188 ff, 209
Erasmus, Desiderius, 48
Etaples, Treaty of, 56
Exchequer, Court of; organization and system, 60-65, 233 ff; expenditures and receipts in, 80-81, 137-138, 216
Expenditures of the English government, 79-87, 88-92, 137-143, 190-191, 195-196, 203, 205
de la Fava, Lewis, 45
Ferrers, Lord, 21, 26
Feudal aids, incidents and services; revived by Henry VII, 27-29, 30-31, 44, 83; in the reign of Henry VIII, 153. See also Wardship and Marriage.
Fifteenths and Tenths; description of, 13; in the fifteenth century, 13-14, 15, 16; in the reign of Henry VII, 54-59; in the reign of Henry VIII, 150, 151, 162, 200, 210-211; value of, 225-226. See also Subsidies, Clerical Tenths and Subsidies
Finance Ministers; Wolsey, 92, 98-102; Cromwell, 103, 149 ff; Wriothesley and Paget, 152 ff, 170, 171; Cecil 197; See also Heron, John; Empson, Richard; Dudley, Edmund
Financial policy, discussion of; in fifteenth century, 16-18; in Henry VII's reign, 20, 21-23, 25, 26, 28-29, 30, 31, 32, 42-44, 53, 59; in Henry VIII's reign, 93, 97-99, 103, 106-107, 108-109, 116, 117, 147 f, 149 f, 152 f, 155 f, 182 f; after 1547, 191, 196-200, 202 f, 205; general observations on, 174, 200, 213-214
Fines for livery of lands, 30
Fines of Intrusion, 30 n, 43, 44
Firma Comitatus, 11, 12, 21 n, 65 n, 138
First Fruits and Tenths, 115, 137, 138, 212
Fisher, John, Bishop of Rochester, 116
Fitzwater, Lord, 43
Flanders, see Netherlands
Forced Loans, 52, 79; in 1522, 93-94; in 1525, 95-97, 98 n; the loan of 1542, 151 f, 164; the Devotion Money of 1543, 152 f, 165; the Benevolence of 1545, 155, 165-166; Forced loans 1542-1545, general discussion, 163 ff; the Contribution of 1546, 166; in Mary's reign 211
Fortescue, John, 12, 16-17
Fox, Richard, Bishop of Winchester, 38, 45 n, 92
France, relations with the Empire, 116, 131, 144, 156
France, relations with England, 24, 54 ff, 91, 105, 116, 131 ff, 178, 182 ff, 209; see also England, foreign relations
Francis I, king of France, 91, 95, 96, 100, 101, 102, 116, 127, 144 ff

- Fraud and corruption in financial affairs, 178 ff, 197-198, 202
- Frankfort, Treaty of, 55
- Friaries, suppression of, 135
- Friars Observant, 126
- Fuggers, bankers of Augsburg, 170, 171, 172, 173, 174, 186, 195-196
- Gens d'armes, 191, 196
- Gostwicke, John, Treasurer of First Fruits and Tenths, 115, 132, 149
- Gresham, John, 168, 170, 172
- Gresham, Sir Richard, 168, 170
- Gresham, Thomas, 171, 196, 209
- Guildford, Richard, 19
- Hall, Edward, 36 f, 42
- Hanaper of Chancery, 64, 67, 99, 138
- Hanseatic League, 24, 207
- Henry II, king of France, 188
- Henry IV, king of England, 12, 14, 16
- Henry V, king of England, 11 n, 109
- Henry VI, king of England, 11 n, 12, 21 n, 54
- Henry VII, king of England, 19, 21, 23, 24, 26, 27, 29, 30, 31, 32, 35, 36, 37, 38, 43, 45, 47, 49, 50, 53, 54, 55, 56, 59, 60, 67, 72, 73, 76, 79, 85, 88, 108-109, 150, 159, 175, 207, 213
- Henry VIII, king of England, 30, 46, 48, 72, 73, 88, 90, 91, 92, 93, 96, 97, 103, 106, 110, 111, 113, 115, 118, 120, 121, 125, 127, 128, 129, 133, 144 ff, 178, 187, 189, 207, 214
- Herbert, Lord, 38
- Heron, John, Treasurer of the Chamber, 29, 30, 33, 34, 38, 39, 45, 58, 69, 71, 72, 73, 88
- Hesse, 110
- Hodre, William, 70
- Household expenditures, 81, 89, 99, 140-141, 182, 189, 194, 203
- House of Commons, 16, 28 n, 35, 107, 109, 121, 148, 161, 185, 200, 211 n
- House of Lords, 121, 148
- Iceland, 24,
- Increases in government expenses, 84 n, 88-89, 98. See also War costs and expenditures
- Indemnities, see Pensions from France
- Ingworth, Richard, Bishop of Dover, 135
- Inquisitiones post mortem*, 28
- Intercursus Magnus*, 24
- Ireland, 29, 52, 78, 85, 104, 114, 129, 141, 142, 163, 189, 191, 195, 203, 212
- Italian mercantile houses in London, 168, 171, 173
- James IV, king of Scotland, 58
- James V, king of Scotland, his relations with Henry VIII, 125, 128, 146. See also England, foreign relations
- Jewels of monasteries and shrines, 117, 118, 119-120, 131, 140. See also Church plate and ornaments
- Jewels, purchase of, 78, 85, 186, 186 n, 195
- King's Auditors, 76, 77 n
- King's Chamber, see Treasurer of the Chamber
- Kneysworth, Thomas, 35, 43
- Knights of St. John; confiscation of estates of, 114, 150; restoration by Mary, 212
- Knights Templar, 109
- Knights of the Bath, 27
- Lane, William, 194
- Layton, Richard, 117, 119, 122, 123, 132
- Legh, Thomas, 117, 118, 119, 120, 122, 123, 132
- Lincoln (city of), 14,
- Livery of lands, suit for, 30
- Loans, Foreign (in Flanders), 154, 156; general discussion of, 1544-1547, 167 ff; in the reign of Edward VI, 186, 186 n, 191, 195, 209; in the reign of Mary, 209

- Loans Internal, 51-52, 78-79, 197, 207, 210. See also Forced Loans
- Loans to foreign princes, 85, 85 n, 91-92, 100, 105, 152
- Loans to merchants by Henry VII and Henry VIII, 24, 34, 85
- London, John, 118, 122
- London, Mayor and Alderman of the city of, 35, 43, 51, 52, 197, 210
- Louis XI, king of France, 55, 57
- Louis XII, king of France, 100
- Lovell, Francis, 21
- Lovell, Thomas, 19, 38, 71
- Mary, queen of England, 50, 146, 200, 202, 207, 209, 210, 212, 213
- Maximilian, emperor of Holy Roman Empire, 54, 55, 90, 91, 92
- Medino del Campo, Treaty of, 24, 55
- Mercantile transactions of the English government, 39, 40, 45, 168, 169, 171, 172, 173, 174, 186, 186 n, 192, 193, 198
- Merchant Adventurers, 41, 168, 197, 207, 209, 210
- Merchants of the Staple, 34, 38, 44-45, 51, 67, 74-75, 168, 197, 207, 209; See also Calais
- Merton, Statute of, 185
- The Mint, 67, 155, 156, 176 n. See also Coinage, debasement of
- Monastic charities, 123-125
- Monastic estates; alienation of, see Crown lands, sale of; value of, see Rents of monastic lands
- Monasteries, dissolution of, 113-116, 117-136; reasons for the dissolution, 121-130; report of the visitors, 118-125; monasteries as papal strongholds, 125-128; financial motives, 128-129; the Acts of Dissolution, 129-130, 133; procedure of dissolution of a house, 130-131; dissolution of the large houses, 131-135
- Monastic estates; grant to royal favorites, 148; grants to members of the Council of Edward VI, 178-179
- Montford, Simon, 25
- More, Thomas, Lord Chancellor, 28 n, 107, 116
- More, Treaty of, 100
- Morton, John, Archbishop of Canterbury, 19, 122
- Mountjoy, William, Lord, 48
- National Defense, measures of, and expenditures for works of, 105-106, 107, 114, 142, 145, 147, 178, 182, 188-189, 203. See also War costs and expenditures
- Naval preparations and costs, 58, 105-106, 145, 147, 203. See also War costs and expenditures
- Netherlands, 24, 53, 154, 167 ff, 186, 191
- Nobility, estates of, annexed by the crown, 21, 25, 26, 99, 108-109. See also Private property, seizure of
- Norfolk, Thomas, second Duke, 21; Thomas, third Duke, 21, 96, 97, 107, 112, 148
- Northumberland, Henry Percy, Earl of, 42, 43, 49
- Norway, 24, 109
- Obligations, 33 ff
- Organization of the revenue system, 25, 26, 34, 38, 49-50, 60-77, 99, 115, 130-131, 192, 204
- Oxford, John, Earl of, 19
- Paget, William, 152 ff, 170, 171, 179, 181
- Papel Bull of Privation, 105, 116, 144
- Parliament, 11, 13, 14, 15, 16, 18, 20, 26, 53, 54, 55-56, 58, 72, 88, 93, 94, 95, 107-108, 112, 114, 115, 120, 148, 150, 160, 183, 184, 185, 198, 210, 211
- Parre, Thomas, 43
- Paulet, Amis, 44, 58

- Pekham, Edmund, 153, 155, 156,
 177 n, 186 n, 189 n, 198
 Pension from France, 55-57, 82 n,
 85, 99-102, 103, 116, 145 ff, 158
 Pension, see Annuities
 Perpoynt, William, 45
 Philip, Archduke of Austria, 85
Pilgrim, The, 121-122
 Pilgrimage of grace, 124, 131-132,
 141, 142
 Plate, Purchase of, 78, 85
 Plumptre, Robert and William, 45,
 46
 de la Pole, Edward, 26
 Post war expenditures, 158, 178,
 188-189
 Poynings, Edward, 19
Praemunire, 107, 110-112
 Prices, rise of, in the sixteenth
 century, 89, 174, 178, 190, 205
 Private property, seizure of by the
 crown under forms of attainders,
 25, 150 f.
 Privy Council; its control of affairs
 after 1544, 178; under Edward
 VI, 178; self-voted grants of
 crown lands, 178 ff. See also 19,
 38, 45, 47, 48, 196
 Privy seals for loans, see Forced
 loans
 Profits from war, 53 ff, 57, 58
 Purchase of alum, see Mercantile
 transactions of the English govern-
 ment
 Purchase of copper, see Mercantile
 transactions of the English gov-
 ernment
 Purchase of Fustians, see Mercan-
 tile transactions of the English
 government.
 Ratcliffe, Richard, 21
 Ratcliffe, Robert, 25
 Recognizances, 33 ff
 Redon, Treaty of, 55
 Reed, Richard, 166
 Regent (royal ship), 39
 Rents of the monastic lands, 118,
 137, 140, 178 n
 Revenue, amount of; in the fifteenth
 century, 12; under Henry VII,
 78-87; under Henry VIII, 88-90,
 99 n, 99-102, 137-143; in 1550-
 1551, 190; in Mary's reign, 206,
 208
 Revenue, sources of in the middle
 ages, 11
 Revolution of 1485, its nature, 19-
 20
 Richard II, king of England, 22
 Richard III, king of England, 11 n,
 12, 13, 19, 21, 23, 51, 56, 65, 66 n,
 67
 Riche, Sir Richard, 149, 153, 155
 Richmond, Earldom of, 21
 Riga, 24
 Roach, William, 166
 Roger, Bishop of Carlisle, 70, 72
 Royal supremacy, monastic opposi-
 tion to, 125-127
 Sale of lead, see Mercantile tran-
 sactions of the English govern-
 ment
 Say, William, 43
 Scotland, relation with England,
 58, 104, 114, 128, 146, 178, 182 ff.
 See England, foreign relations;
 James IV, king of Scotland;
 James V, king of Scotland
 Seymour, Edward (Lord Protector),
 149, 156, 184-185, 198
 Sharrington, William, 180
 Sheetz, Erasmus, 173, 174, 186, 195-
 196
 Sherbourne, Robert, 44, 58
 Shrines, suppression of, 135-136
 Simnel, Lambert, 52, 53
 Somerset, Charles, 38
 Southwell, Robert, 70, 72
 Sovereign (royal ship), 39
 Spain, 54, 55
 Spiritual livings, 212-213
 Stalled debts, 50, 192
 Stafford, Humphrey, 25

- Stanhope, Edward, 45
 Star Chamber, 44
 Stanley, William, 25
 Subsidies; in the fifteenth century,
 14 ff; under Henry VII, 51-59;
 under Henry VIII, 93, 94, 107-
 108, 114, 148, 150, 151, 152, 158,
 159 ff, 162; under Edward VI,
 184, 185, 198 f; in the reign of
 Mary, 210-211; value of subsidies
 1485-1558, 225-226. See also
 Clerical Tenths and Subsidies;
 Fifteenths and Tenths
 Subsidies of wool, wool fells and
 leather, see Customs Revenues
 Suffolk, Charles Brandon, Duke of,
 94, 97, 166, 168, 169
 "Surplus" The, 78-79, 86-87, 93,
 102, 106-107, 142-143, 147 ff, 155,
 182, 188, 191, 193 n
 Switzerland, 110
 Taxation; before 1485, 13-16; for
 later taxation see Subsidies, Fif-
 teenths and Tenths, Clerical
 Tenths and Subsidies, Forced
 loans
 Taxation, popular attitude toward,
 16, 53, 93, 94, 95-97, 106-107,
 108, 116, 162, 174, 199-200
 Temporalities of Bishops and Ab-
 bots, 31, 82
 Tonnage and Poundage, and sub-
 sidy of wool, wool fells and leath-
 er, 11, 20, 25, 88, 104, 104 n, 206-
 209
 Tournai, 92, 100
 Treasurer of the Chamber, 25, 26,
 30 n, 31, 33, 49-50, 67, 71, 72, 89,
 93, 236; revenues of, 81-86, 88
 Tregonwell, John, 118, 122, 132
 Tucher, Lazarus, 187, 195
 Tuke, Brian, 47
 Tyrrel, Thomas, 43
 Vaughan, Stephen, 154, 156, 167 ff
 Vaux, Nicolas, 43
 Vergil, Polydore, 36 f, 42, 47
 Visitations of monasteries, 117 ff,
 122, 132
 Wales, Principality of, 13, 21, 26,
 65
 Wallop, John, 147
 Warbeck, Perkin, 35, 53, 58
 War costs and expenditures; in
 1492, 57; in 1496-1497, 58; from
 1511 to 1514, 90-93; from 1522 to
 1525, 94, 97; in 1532, 104; in
 1536, 141; from 1542-1546, 147,
 155, 156; from 1547-1550, 182.
 See also Ireland.
 Wardrobe Expenditures, 81, 89, 182,
 203 n
 Wardship and Marriage, 29, 30-31,
 42 n, 70, 70 n, 138 see also
 Court of Wards
 Warham, William, Archbishop of
 Canterbury, 95 f, 122
 Warwick, Spencer and Salisbury
 lands, 65, 67, 68
 Welsars, bankers of Augsburg, 168,
 169
 Westby, Bartholomew, 70, 72
 Whalley, Richard, 180
 Williams, John, 181
 Wiot, Henry, 38
 Wolsey, Thomas, 88-102, 107, 109,
 110, 160, 163, 182
 Wriothesley, Thomas (Lord Chan-
 cellor), 149, 152 ff, 163, 168, 170,
 176
 Wullenwever, Jurger of Lübeck, 105
 Yarmouth (town of great), 14
 York, Cecilie, Duchess of, 25 f
 Zouche, John, Lord, 21

UNIVERSITY OF ILLINOIS STUDIES
IN THE
SOCIAL SCIENCES

VOL. IX

DECEMBER, 1920

No. 4

THE ECONOMIC POLICIES OF RICHELIEU

BY

FRANKLIN CHARLES PALM, PH. D.
Assistant Professor of Modern European History
in the University of California

PRICE \$1.50



PUBLISHED BY THE UNIVERSITY OF ILLINOIS
URBANA

[Entered as second class matter, July 27, 1915, at the post office at Urbana, Illinois, under the Act of August 24, 1912. Acceptance for mailing at the special rate of postage provided for in section 1103, Act of October 3, 1917, authorized July 31, 1918.]

UNIVERSITY OF ILLINOIS STUDIES IN THE SOCIAL SCIENCES

Vol. I, 1912

- Nos. 1 and 2. Financial history of Ohio. By E. L. Bogart. \$1.80.
No. 3. Sources of municipal revenues in Illinois. By L. D. Upson.*
No. 4. Friedrich Gentz: an opponent of the French Revolution and Napoleon. By P. F. Reiff. 80 cents.

Vol. II, 1913

- No. 1. Taxation of corporations in Illinois, other than railroads, since 1872. By J. R. Moore. 55 cents.
Nos. 2 and 3. The West in the diplomatic negotiations of the American Revolution. By P. C. Phillips. \$1.25.
No. 4. The development of banking in Illinois, 1817-1863. By G. W. Dowrie. 90 cents.

Vol. III, 1914

- Nos. 1 and 2. The history of the general property tax in Illinois. By R. M. Haig. \$1.25.
No. 3. The Scandinavian element in the United States. By K. C. Babcock.*
No. 4. Church and state in Massachusetts, 1691-1740. By Susan M. Reed.*

Vol. IV, 1915

- No. 1. The Illinois Whigs before 1846. By C. M. Thompson.*
No. 2. The defeat of Varus and the German frontier policy of Augustus. By W. A. Oldfather and H. V. Canter.*
Nos. 3 and 4. The history of the Illinois Central railroad to 1870. By H. G. Brownson. \$1.25.

Vol. V, 1916

- No. 1. The enforcement of international law through municipal law in the United States. By Philip Quincy Wright. \$1.25.
No. 2. The life of Jesse W. Fell. By Frances M. Morehouse. 60 cents.
No. 3. Land tenure in the United States with special reference to Illinois. By Charles L. Stewart.*
No. 4. Mine taxation in the United States. By L. E. Young. \$1.50.

Vol. VI, 1917

- Nos. 1 and 2. The veto power of the governor of Illinois. By Niels H. Debel. \$1.00.
No. 3. Wage bargaining on the vessels of the Great Lakes. By H. E. Hoagland. \$1.50.
No. 4. The household of a Tudor nobleman. By P. V. B. Jones. \$1.50.

Vol. VII, 1918

- Nos. 1 and 2. Legislative regulation of railway finance in England. By C. C. Wang.*
No. 3. The American municipal executive. By R. M. Story. \$1.25.
No. 4. The Journeymen Tailors' Union of America. A study in trade union policy. By Charles J. Stowell. \$1.00.

Vol. VIII, 1919

- No. 1. Co-operative and other organized methods of marketing California horticultural products. By J. W. Lloyd. \$1.25.
No. 2. Cumulative voting and minority representation in Illinois. By B. F. Moore. Revised edition. 75 cents.
Nos. 3 and 4. Labor problems and labor administration in the United States during the World War. By Gordon Watkins. \$2.00.

* Out of print.

UNIVERSITY OF ILLINOIS STUDIES
IN THE
SOCIAL SCIENCES

VOL. IX

DECEMBER, 1920

No. 4

THE ECONOMIC POLICIES OF RICHELIEU

BOARD OF EDITORS:

ERNEST L. BOGART

JOHN A. FAIRLIE

ALBERT H. LYBYER

PUBLISHED BY THE UNIVERSITY OF ILLINOIS
UNDER THE AUSPICES OF THE GRADUATE SCHOOL
URBANA, ILLINOIS

COPYRIGHT, 1922
BY THE UNIVERSITY OF ILLINOIS

The Economic Policies of Richelieu

BY

FRANKLIN CHARLES PALM, PH. D.

Assistant Professor of Modern European History
in the University of California

To my Father and Mother

CONTENTS

CHAPTER	PAGE
PREFACE	9
I. INTRODUCTION	13
<p>Richelieu is known chiefly by his political accomplishments. The aim of this study is to point out that he was an economic as well as a political statesman. The economic side of his career has been underestimated, and a study of this is important in order to attain a fair estimate of his character and accomplishments.</p>	
II. THE AGE OF MERCANTILISM	17
<p>A. The 17th century was the age of mercantilism. Definition of the mercantilistic view of which Richelieu was on the whole a true exponent.</p> <p>B. The age of Henry IV and Sully was the first in which the economic side of French development was recognized and fostered. Both Sully and Henry IV lacked definite conceptions of economic doctrine, and what they accomplished along such lines largely disappeared after the death of Henry IV. The meeting of the Estates General in 1614.</p> <p>C. Montchrétien's economic treatise was published about 1614. In it he brings out the need of a great man at the head of affairs of state to meet the various economic problems. The economic philosophy of Montchrétien was very similar to Richelieu's. It is probable that the Cardinal read and was influenced by Montchrétien's book.</p>	
III. THE ECONOMIC RELATIONS EXISTING BETWEEN RICHELIEU, THE KING AND THE THREE ESTATES	29
<p>A. The King</p> <p>Richelieu regarded the King as the father of his country, responsible to God alone. He and the Cardinal were to do all they could to build up the state of which the King was the sole earthly owner.</p> <p>B. The Nobility</p> <p>Richelieu wanted to diminish the political power of the nobles and increase their economic and other usefulness. He recognized the justice of their claims to a large place in the administrative functions of the country, and frankly opposed them only in so far as they injured the development of the state.</p>	

C. The Clergy
 Richelieu favored a national clergy as a valuable factor in the welfare of the state. He recognized their economic as well as their religious importance.

D. The Third Estate
 Richelieu, according to some writers, considered the Third Estate from the point of view of the welfare of the nation, even though such consideration might prove detrimental to the position of that body. Yet he did have sympathy for the Third Estate from the very first and tried to better its position. Other problems prevented the completion of his plans in its behalf, which one can find expressed in his *Testament Politique*.

IV. THE ECONOMIC ASPECTS OF RICHELIEU'S POLICY OF CENTRALIZATION

46

Centralization, according to Richelieu, was a means of state building. In becoming "grand master, chief and general superintendent of navigation and commerce," he took his first important step in the economic centralization of power in the hands of one man. Richelieu's treatment of all individuals was based on their contribution for or against the public welfare. The economic importance of the Intendants, the reduction of the powers of the *Parlements*, and Richelieu's relations toward the Huguenots. His ideas concerning the selection of royal officials. The government furthered any schemes beneficial to the public welfare: i.e., Hospitals.

V. RICHELIEU AND THE FINANCIAL ADMINISTRATION OF FRANCE

62

The financial policy of Richelieu is difficult to treat. It must be considered as a whole, even though it was incomplete at the time of the death of the Cardinal. This phase of his administration is not so bad as has been depicted, as is shown by a study of: A. French finances during the administration of Richelieu, and the efforts made to reform them; B. the theoretical financial views of the Cardinal as found in his *Testament Politique*.

VI. THE ECONOMIC RELATIONS OF RICHELIEU TO AGRICULTURE, INDUSTRY, AND INTERNAL COMMERCE

82

What little Richelieu accomplished in the field of internal affairs was hindered by the requirements of his external policy. Nevertheless, his internal administration was based on the same unconscious mercantilistic

principles which he followed in his external affairs. Peace was needed before the maximum attention could be paid to internal problems. His efforts to develop agriculture, industry, and internal commerce.

VII. THE IDEAS AND ACCOMPLISHMENTS OF RICHELIEU AS REGARDS A MARINE 92

Richelieu, appointed to the position of "grand master, chief, etc.," used this office as a means for carrying out his ideas in regard to creating a great marine. Causes which influenced him to take action along this line. His accomplishments, in the way of building up the war and merchant marine. The importance of his work.

VIII. THE IDEAS AND ACCOMPLISHMENTS OF RICHELIEU AS REGARDS COLONIZATION 108

Little done before Richelieu's time, but unprecedented growth in French colonization under his direction. His early ideas with regard to colonization. His accomplishments, and the results of this phase of his administration.

IX. RICHELIEU AND THE DEVELOPMENT OF FOREIGN COMMERCE 125

The rise of foreign commerce during the age of Richelieu made it naturally an important part of his administration. As Superintendent of the marine and commerce, he tried to develop trade to the utmost, as illustrated best in the articles of the "Code Michaud." Difficulties encountered in his efforts to develop commerce. Richelieu's conception of the value of commerce as an important part of the "great state" idea, as illustrated in his commercial relations with other great European powers, the Levant, and minor countries. General ideas of the Cardinal concerning trade as expressed in his *Testament Politique*.

X. THE ECONOMIC ELEMENTS IN THE DIPLOMACY OF RICHELIEU 141

Richelieu advocated a combined continental and colonial policy. He planned that the internal economic development of France should be carried out extensively after the Thirty Years' War was over. His "welfare of the State" doctrine — which was the guiding force of his administration — was not understood or comprehended by the common people. The economic elements in his diplomatic relations with Spain, England, Holland, Italy, and the northern States. The economic

phase of the Thirty Years' War. Richelieu's purpose in entering the war from an economic point of view.

XI. CONCLUSION 172

Mazarin carried out only the external political phase of Richelieu's policy. Thus France lost a great opportunity. Colbert took up the economic program again but irreparable damage had been done. In conclusion, mercantilism was the keynote of the Cardinal's economic policy. He looked forward to a period of universal peace, and an opportunity for a political and economic reconstruction of France. His two general contributions to economic thought and practice.

APPENDIX A. BIBLIOGRAPHY 180

APPENDIX B. THE AUTHENTICITY OF RICHELIEU'S *Testament Politique* 189

BIBLIOGRAPHY TO APPENDIX B 195

PREFACE

This study attempts to bring out the economic phase of the administration of Cardinal Richelieu. At present he is rightly regarded as one of the great French statesmen. He is more than that, for he may well be considered one of the first economic leaders in French history. This is the central theme of the treatise and although the study cannot claim to be regarded as a final treatment of the subject, nevertheless, if it should aid in the development of similar investigations in the future, the writer would feel amply repaid.

The attempt has been made here to use as fully as possible the letters, contemporary memoirs, the interesting *Mercur* *François* and other sources available in a consideration of this fascinating age.

This study was carried on mainly in graduate work at the University of Illinois. It is impossible therefore to thank all persons to whom the writer is indebted for advice and criticism. Especial gratitude is due to Professor A. H. Lybyer of the University of Illinois, whose scholarly direction and inspiring criticism have made this study possible. Acknowledgement should also be made of the many valuable suggestions given by Professor L. M. Larson of the University of Illinois, and Professors H. I. Priestley and C. E. Chapman of the University of California. Finally, grateful notice should be taken of the kind and efficient way in which the staff of the library of the University of Illinois has assisted in the search for materials.

FRANKLIN CHARLES PALM

UNIVERSITY OF CALIFORNIA

MAY 26, 1922

THE ECONOMIC POLICIES OF RICHELIEU

Car chacun sait que, quoique vous fassiez,
En guerre, en paix, en voyage, en affaires,
Vous vous trouvez toujours dessus vos pieds.

— *Works of Voiture*, II, 426-7.

Edition Ubicini.

CHAPTER I

INTRODUCTION

If one were to ask the average well informed individual concerning the career of the Cardinal de Richelieu, the reply would be one which would convey little more than an intelligent appreciation of the political acts of this great and interesting man, for these have been regarded as constituting the dominant phase of his life. His genius along this line was clearly brought out in his conduct of the French participation in the Thirty Years' War, his settlement of the religious question in France, and his relations with foreign powers, the nobility, the Pope, the Queen Mother, and other eager opponents of his ideas. "One is accustomed by habit to consider Richelieu in his struggle against Austria on the outside, the nobles and Protestants on the inside, as only a diplomat of keen and profound conceptions, a statesman advancing to his designs with an unflinching energy, the founder of the absolute monarchy."¹

There is another side to his career which had no inconsiderable importance in directing and influencing his entire life and achievements, namely, the economic phase. History has placed such an emphasis on the other part of his life that it is difficult even to ask if economic interests held any place in that spirit which was agitated by such great designs. For example, did Richelieu have an economic purpose in his capture of La Rochelle? Was his aim in entering the Thirty Years' War purely political? Did the Cardinal have an economic philosophy? It is to be the purpose of this study to determine the economic elements which entered into the life and deeds of Richelieu, and thereby to establish the claim that this man was not only a magnificent statesman, but also an able economist, with all the crude but important economic conceptions of his time. To build France up as a strong unit, both political and economic, was

¹ Pigeonneau, H., *Histoire du Commerce de la France*, 2 vols., Paris, 1889, II, 375.

the goal of his ambition, which a premature death prevented him from reaching.

The economic aspect of Richelieu's achievements has been generally neglected, although it has been noticed by a few writers. One says that "most historians have glided rapidly over the economic side of Richelieu's career."² Others have claimed that there is a gap in our general histories, and that, if Richelieu had despised or neglected economic problems it would have shown a weakness in his spirit. Yet, far from putting them back to second place, he brought them to the front and studied them with passion. He certainly did not impart second-rate ideas in his treatment of commerce, the marine, and colonization.³ Another writer who has treated Richelieu's career from the administrative point of view, claims that the Cardinal's work as an administrator was not inferior to his political ability. He created in all directions a vigorous impulsion to national energy, which if continued along those lines would have produced wonderful results.⁴ The same writer in defending the case of Richelieu as far as concerns his entire administrative career has succeeded in bringing to light the economic aspect of the man. In fact, most of his administrative reforms were of direct or indirect economic importance. When he proceeds to point out the fact that Richelieu centralized the monarchy and laid France open to administrative reforms,—by ruining the political positions of the Protestants and the nobles, by giving the council of state a superior place, by diminishing the power of local government and establishing fixed duties in the *généralités* —⁵ he really indicates the first steps taken toward an economic reform of the country which Richelieu fully intended to carry through. Many difficulties, however, prevented the great minister from accomplishing all he desired. Most people have neglected to take these into consideration and thus he has been denied a fair judgment of his career upon the economic side.

His great internal and external achievements seem im-

² Pigeonneau, II, 375-6.

³ *Ibid.*, 376.

⁴ Caillet, J., *L'Administration en France sous le Ministère du Cardinal de Richelieu*, Paris, 1857, Introduction, I-IV.

⁵ Caillet, Introduction, I-IV.

possible when one considers his poor physical health.⁶ Sick throughout his life, one wonders how he was able to carry out or even to conceive the things he did. Then there were the many external and internal difficulties to be removed, some of which were of a sort directly opposed to the material development of any nation, as the Huguenot situation, for example. Indeed, says one writer, the historian who studies the greatest statesman France ever had without considering the gravity of the internal situation at that time and the many difficulties of the internal organization; without appreciating the diversity of provinces, and the multiplicity of their franchises; without seeing the clash of religious beliefs, the variety of taxes, customs, etc., in permanent conflict; without considering the immense interests of the kingdom and the conditions of its power and security, will never comprehend either the power or the ability of this man, or the genius of his work.⁷ The pressing need to attack these many difficulties is best illustrated in the opening passages of Richelieu's *Testament Politique*, where he maintained that his first problems were to ruin the political power of the Huguenots, lower the pride of the nobles, reduce all rebellious subjects to their duties, and raise the king's name again in foreign affairs to the place where it ought to be.⁸

A good example of the difficulties encountered by Richelieu is shown in the opposition of public opinion or sections of it. In fact in 1626 he was accused of ruining the rights and interests of France by remaining at peace. This accusation was voiced by some so-called "*libelles*" in Germany, who saw no good in his actions.⁹ However, it is interesting to notice that the "theologians" in reply maintain that the reasons which guided the king and the Cardinal with regard to the so-called resolutions of peace are unrecognized by his opponents. "Why not praise what has been accomplished rather than condemn what has not been carried out? Since you bear the names of Christians would it not be better to judge those things which are beneath the

⁶ *Ibid.*, VI-IX.

⁷ Monterétien, A., *Traicté de l'Oconomie Politique*, Ed., Th. Funck-Brentano, Paris, 1889, Introduction, XCI.

⁸ Richelieu, A. J., Cardinal, duc de, *Testament Politique*, Londres, 1770, pt. I, 8-26.

⁹ *Mercure François*, le (1604-44), à Paris, XII, 516-18.

surface rather than to condemn the surface indications?" In other words criticised by some because he fostered wars, and by others because he made peace, his problems were very modern indeed, and it is no wonder that many sides of his career (the economic for example) have been submerged because of a mistaken perspective of the difficulties involved.

It seems profitable, therefore, to dwell for a while upon the economic activities of Richelieu and to show that most phases of his administration were more or less influenced by them. To trace the economic thread is the problem of this study. This involves an examination of its importance in the confusing unsolved period of the first half of the seventeenth century, the age of Richelieu.

CHAPTER II

THE AGE OF MERCANTILISM

The seventeenth century was distinctly the age when mercantilism reached its height. Mercantilism was the natural outcome of a series of historical events which caused men to grasp and understand the economic theories of the doctrine without realizing that they really were developing a distinct school of economic thought. It did not take long, however, to discover and to formulate, along definite lines, the philosophy behind it, once it had become the cardinal feature of the nation's development. It is desirable to distinguish some of the important factors which led to the practical application of mercantilistic ideas and the consequent theoretical formulation, because, as will be shown, Richelieu based his entire administration on the principles of the mercantilistic doctrine and in doing so was one of the most enlightened exponents of that system.

The mercantilistic age seems to fall in the period of transition from medieval to modern conditions, and really grew out of those changes. "In fact," says one writer, "the decomposition of medieval feudal life into modern existence is one of the two chief aspects of modern life."¹ He goes on to say that the new system based on individual activity and scientific conviction has superseded the old military activity and supernatural beliefs of the middle age. Thus he maintains that industry has been substituted for warfare. It often seems better to consider industry as another cause for warfare. Moreover, the beginnings of the separation of church and state, the growth of commerce and industries, and the discovery of the new world with all its important consequences had a strong influence in developing the modern era to the detriment of the medieval age with its feudalistic basis of existence. They resulted in the growth of the state as the vital force which was to expel all

¹ Bridges, F. H., *France under Richelieu and Colbert*, Edinburgh, 1866, 5-10.

the needless and unhappy phases of the past ages, and a new kind of feudalism came into existence in which the state, or its king, was the actual feudal lord and his subjects were his vassals. As a result when one reaches the stage in history where the state takes the lead in controlling the destinies of man, then appears the modern age and with it the so-called period of mercantilism.

As to a definition of the mercantilistic age, it may best be defined in terms of the state. "It is not," says Schmoller, "so much a doctrine of money or tariff barriers, protective duties, or navigation laws as it is a doctrine which involves something far greater, namely, the total transformation of society, and its organization as well as that of the state and its institutions, in the replacing of a local and territorial policy by that of the state. Now followed a struggle between state and district against the great nobility, the towns, the corporations, and provinces, the economical as well as the political blending of the struggle of these isolated groups into large wholes, the struggle for uniform measures and coinage and for a well ordered currency and credit."² Thus the mercantilistic doctrine was that philosophy which centered everything economic and political in the hands of the state.

When one assumes the general definition of Schmoller, that mercantilism implies state-building, it is also necessary to realize that this general idea includes a series of theories which prevailed to various degrees in different minds: in the first place, a tendency towards overestimating the importance of possessing a large amount of precious metals; secondly, towards an undue exaltation (a) of industry which works up material over industry which provides it, and (b) of foreign trade over domestic; thirdly, towards attaching too high a value to a dense population as an element of national strength; and fourthly, towards invoking the action of the state in furthering artificially the attainments of the several ends thus proposed as desirable.³ Thus the three earmarks of the mercantile system are: (1) attention to commerce (the importance of which was exaggerated), (2) cultivation of a favorable balance of trade, (3) prohibition in

² Schmoller, G., *The Mercantile System*, New York, 1902, 51.

³ Ingram, J. K., *History of Political Economy*, London, 1904, 36-37.

duties, bounties, and development of monopolies, etc.⁴ All these things led to the struggle of nations not only for political but for economical predominance. States became, as it were, artificial hothouses for the rearing of urban industries, etc.⁵ Most of these characteristics will be found existing during the administration of the great Cardinal.

In following out the policies of his administration, Richelieu conformed approximately to the common mercantilistic conception as described above. In doing so he was especially fortunate in having certain predecessors to guide him in his actions. Henry IV and his minister, Sully, laid the foundation or at least made the excavations for the economic system of that century. The economist Montchrétien drew up in 1615 the first French work on the subject of economics. Its crude but timely ideas correspond to the theoretical basis for Richelieu's administration. It represented the thought of the time and so Richelieu, whether he read it or not, followed its precepts with astonishing accuracy. This work together with the contributions of Henry IV and Sully requires brief consideration.

The age of Henry IV and Sully marked the rise in France of a consciousness of the economic side of life. People had not been really aware of its presence in the fifteenth century. The progress of public peace and well being, the influence of the Italian custom, had given to the commerce of luxuries an impulse hitherto unknown. The age of discoveries had awakened the enterprise of the Norman mariners who began following in the tracks of the Portuguese and Spanish navigators about the same time as the English.⁶ Thus France began to assume a place of economic as well as political importance in the affairs of the world. As a consequence the men at the head of the government, whether they were kings or prime ministers, began to consider and solve matters which were primarily of economic importance, on that basis alone, and were influenced in their political policies by the economic results to be obtained thereby.

Louis XI, at the close of the fifteenth century, initiated the economic growth of France especially by his centralization and

⁴ *Ibid.*, 50.

⁵ *Ibid.*, 39.

⁶ Pigeonneau, II, 54-55.

unification of the government. But it was left to Henry IV and Sully, who came in after the religious wars, at the end of the sixteenth century, to make the first direct efforts to solve the commercial questions confronting the French nation.

The first problem encountered was the proposition of securing internal peace. The edict of Nantes settled the matter so far as the religious strife was concerned. The nobles were also subdued by a combination of payments and force. Thus in a short time both Henry and Sully were ready to strengthen the economic position of France. Now at this time existed the peculiar situation where a king and his helper both had their own ideas on the subject and tried to carry them out regardless of the opinion of the other party. For example, Henry IV endeavored to make France, and especially Paris, the artistic and industrial center of the world, much to the disgust of Sully, who favored the encouragement of agriculture.⁷ As a consequence, France at this time underwent a temporary expansion in agriculture, industry, colonies, the marine, and internal and external commerce.

By their accomplishments Henry IV and Sully laid, in a more or less haphazard and incomplete way, the foundations which Richelieu and Colbert were to complete or ruin. One writer aptly sums up the work of Henry IV as follows: "He did his best to facilitate the downfall of the old system (feudal) and to encourage the new. He tried to remove the shackles upon industry and commerce; to improve the finances and found trans-Atlantic colonies, etc. He looked forward to a common European arbitration agreement, of a universal peace, and to accomplish this which might be by others defined as a policy of the balance of power, he set in motion the movement against the forces of retardation, namely Austria and Spain."⁸ In other words, the policy of Henry IV was directed in one way along the line of international relations, and thus, while attention was given to the building up of the state, it was not the central theme of his administration. However, all of these excellent and well planned policies were ended when Henry IV was killed in 1610, and fourteen years of economic, as well as political stagnation, were to follow.

⁷ Pigeonneau, II, 289-290.

⁸ Bridges, 25-26.

A certain writer says that "the death of Henry IV was deplorable in that the brilliant impulses which he had impressed on the economic life of the country were stopped and existed no more."⁹ This is not wholly true, for one can find in the treatise of Montchrétien a clear presentation of the doctrine of the time, and this work had a definite influence on the economic future of France. Yet, in a practical sense, the tasks of Henry IV were incomplete. "The peasants existed but that was all; credit and commerce reestablished themselves with difficulty; the systems of roads and canals were only outlined; colonial experiences had only begun and habits of order, of economy, and of honesty, which Sully had introduced into the financial administration, had not yet become traditions, etc."¹⁰

It would be interesting to speculate upon what might have occurred if the rule of Richelieu had succeeded that of Henry IV in 1610. But as it actually happened, the government declined rapidly under Marie de Médicis. She was not able to understand or follow the good policy of her husband. The money saved by Sully was spent, taxes increased, colonies and the marine were neglected, and the new colonial policy was saved only through the energy and ability of Champlain.¹¹

The death of Henry IV then meant an industrial crisis both of a commercial and monetary nature. Troubles which he had settled appeared again. Foreign states disregarded treaties with France, excluded French commerce, sank French vessels, and imposed unfair duties upon French vessels entering their ports, in spite of the privileges they had in French harbors. Things went from bad to worse until finally in 1614 a meeting of the Estates general was called in a vain effort to remedy the situation.

The result of this gathering was not insignificant. Richelieu, in his Memoirs, says that the assembly ended as it began, by doing nothing to advantage for either the king or the public. "It was a financial burden in itself," he claims, "while the corruption it opposed still continued."¹² He fails, however,

⁹ Gouraud, C. M., *Histoire de la Politique Commercial de la France et son Influence sur le Progrès de la Richesse Publique*, Paris, 1854, 174-175.

¹⁰ Pigeonneau, II, 350-352.

¹¹ *Ibid.*

¹² Richelieu, A. J., Cardinal, duc de, *Mémoires*, (Petitot Edition), vols. X-XXX, Paris, 1821-1829, X, 383.

to mention the fact that the king promised to carry out the reforms asked by the assembly and neglected to do so. The interesting features of the gathering are that it indicates a reaction against the bad conditions of the time, that Richelieu was present at the meeting and thus realized what was wrong, and finally, that Montchrétien was led to publish his *Traicté de l'oéconomie politique*, in which he planned a solution for the troubles of France. The Cardinal must have been strongly affected by these two events, and his later actions indicate that he was.¹³ Thus, at the very beginning of his career economic problems were placed before him alongside of the beneficial, practical beginnings of Henry IV and Sully, so that he could not help but be influenced by all these things. It is important, indeed, that the ideas were furnished by an assembly of the people, and by the first French economist. Surely the modern world in a commercial sense, both practically and theoretically, began for France at that period.

Montchrétien was very careful in his work to develop his idea of a paternalistic form of government. "The education of the nation," he said, "is the same as in the family."¹⁴ However, there are some liberal conceptions in this treatment, as he recognized the development of the third estate and a certain amount of individualism.¹⁵ Furthermore, he maintained that the social organization extends beyond the interest of individuals and the family, of the locality and the province, or even the particular interest of the nation.¹⁶ This idea involves a multiplicity of relations between the different divisions of the government and territories which only great men by their genius can comprehend, and by their position and resources can justify so as to increase the general prosperity, or, aided by science and guided by the experience of individuals, can the practice justify, according to the theories of political economy. In other words, he said that the situation called for a great man, and indeed a great leader in the person of Richelieu presently took

¹³ Montchrétien based his work upon the accomplishments of Henry IV. Richelieu and Colbert carried out the industrial and commercial conceptions depicted in his treatise. See Montchrétien, Introduction, LXXXIX.

¹⁴ Montchrétien, Introduction, LV.

¹⁵ *Ibid.*, Introduction, LVI.

¹⁶ *Ibid.*, Introduction, XXV.

advantage of the opportunity, and carried out the major part of the program outlined by Montchrétien. A brief summary of the leading ideas of this early economist may be given, arranged in relation to similar ideas or practices on the part of Richelieu.

He begins in his treatise by describing to the king the excellent resources and situation of France. Richelieu in his *Testament Politique* repeated Montchrétien's ideas almost verbatim.¹⁷ He then complains that France lacks men to invent and to do. Too many of her men go to Spain, England, Germany, and Flanders. Richelieu had this same idea, as will be shown later. He then advocates the development of agriculture and manufactures, so important to the strength of a nation. The whole tone of the book is to "build up the power of the French nation with the rich resources available," — a true mercantilistic doctrine. He advises the king to study the commercial systems of England and Holland as accounting for their remarkable growth. Montchrétien continuously had the interests of France at heart and does not consider outside interests as Henry IV did. The Cardinal conforms with his view in this respect. Montchrétien recognizes both free trade and protection as combined and not separate. "Send your surplus abroad," he says, "but keep what you need and protect it." To carry out this idea both external and internal trade have important rôles. However, it is with foreign commerce that he is chiefly concerned, as was also the case with Richelieu.

"All society, generally speaking," he says, "seems to be composed of government and commerce."¹⁸ Thus the merchants are an important class of people. The stress laid upon commerce by Richelieu will be shown later. Both believe that gold and silver are important, as they supply the necessities for all men; and it is interesting to note that both men in their ideas concerning commerce, industry, etc., constantly refer to the public good, whose interests they claim to follow.

Montchrétien devotes especial attention to commercial relations with England. That country he claims limits the use of the products of French industries in England, for her own benefit, while obtaining fair treatment for her own goods in

¹⁷ *Testament Politique* II, 133-135.

¹⁸ Montchrétien, 137-146.

France.¹⁹ Everything possible is done to ruin French commerce by extra taxes, etc. England desires to get control of navigation. One thus can see that the commercial rivalry between France and England was coming to the front at this time, and it actually was to be one of the first problems confronting the Cardinal.

Montchrétien, on the other hand, admires Holland and desires France to be on good terms with her.²⁰ The fact that they are so near and have mutual interests makes it best to be on friendly terms. Richelieu also had a great admiration for what the Hollanders had accomplished. Both of them wished France to study her and imitate what she had done rather than actually to compete with her.

As to Spain, Montchrétien complains about the failure to treat French traders in Spain as Spanish traders are treated in France. He says, "French subjects are not allowed or permitted in Spain except if they wish to enrich the king of Spain. She is jealous of her colonies and taxes French traders unfairly."²¹ As a result, he claims that it is the duty of the French to see that they are treated justly by the Spanish, as the Dutch have done for their own citizens. "For if Holland could do this, cannot we?" A policy of this nature will lead to the augmentation, the welfare, and the repose of France, and the employment and use of its most courageous subjects, who would like nothing better than to undertake long and difficult duties. By authorizing and protecting the trade of France, this policy will increase commerce. Spanish ships have orders to destroy all French vessels found on the ocean, whether they are Huguenot or Catholic. Thus it is the task of the king to restore the use of the sea, which is common and free to all the world, and on which the French have a natural and legitimate right. How well this part of his work was carried out by Richelieu, who believed in these ideas, will be brought out later. It may be added that no better proof of the early economic rivalry between England,

¹⁹ Montchrétien, 196-197. Montchrétien believed that the severe treatment of foreigners originated by England had resulted in a commercial and monetary crisis. He opposed any concession to that nation except on the basis of reciprocity. See Montchrétien, 129-130, footnote; 134-135.

²⁰ *Ibid.*, 207-208.

²¹ *Ibid.*, 208-209.

Spain, and France can be obtained than in this treatise by Montchrétien, an enlightened contemporary.

Turning to the Levant, he urges the development of silk manufactures at home, instead of obtaining these articles from the Levant, a wasteful method because of the heavy duties imposed by the Levantine countries and Italy. He refers to the attempts of England to form a company in the Levant, and after affirming the fact that Russia constitutes a new outlet for trade, he turns to a discussion of colonization. He was a strong advocate of efforts along this line. Thus he advises the formation of companies like the Dutch East Indian company (the one formed in 1595). "Such companies," he says, "would make France strong and powerful."²²

His treatment of financial conditions in France was based on the cardinal principle of preserving peace and quiet in the land and being fair with the people. He says that there were great riches in the land which would aid the true finances of the country. They were wheat, salt, wine, cloth, and silk. "This country is so flourishing and abundant in all that one can desire that it is not necessary to borrow from one's neighbors."²³ It is not at all the abundance of gold and silver, or the quantity of pearls and diamonds which makes the state wealthy, but it is the resources of things necessary to maintain life, etc. Montchrétien had absolute faith that the resources of France were such as to solve all financial troubles if used properly. Both Richelieu and the economist had a sublime trust in the ability of the French to overcome all commercial odds by this means. Both desired to conserve the people and make them happy. Just as the owner of a large plantation wants to build it up to its greatest extent, both economically and physically, so these two interesting men desired to build up France commercially and also to increase the happiness of the people, not only by internal means but by external additions of colonies to be obtained by the development of navigation.²⁴

Now in order to put down the colonial rivals of France not only a strong army but a strong navy was needed. Like Riche-

²² Montchrétien, 248-255.

²³ *Ibid.*, 237-244.

²⁴ *Ibid.*, 283.

lieu, Montchrétien discusses the geographical position of France with its two oceans, etc. He urges the development of the admiralty. Again, like the Cardinal, he cites the success of Holland on the sea. "If Henry IV had used his money to build up harbors instead of the useless canal de Braire, our commerce would be much greater than it is at present."²⁵ To develop commerce and a strong marine, and thereby make a strong state, was constantly in his mind. At this point it may be added that both Montchrétien and Richelieu advised the king to encourage the building of boats by financial support or to sell some vessels himself, to be used for trade outside of the kingdom. The very fact that the Cardinal as soon as he came into office turned his attention toward colonization, the building up of a marine, and commerce in general, indicates that he was strongly influenced by similar views, perhaps obtained from Montchrétien's treatise.²⁶

Both men claimed that they were actuated by the purpose of "the public welfare," as being the greatest aim of the king. They appreciate the importance of each of the three estates. Richelieu emphasized that of the nobles, and Montchrétien the third estate. They both desired to increase the riches of the people by means of the development of the arts and manufactures, the increase of navigation, and the reestablishment of commerce, which was perishing day by day in the kingdom.²⁷ One cannot help but notice the similarity between the introduction of Richelieu's *Testament Politique* and Montchrétien's work. Both bring out the disorders of the time and the remedies to be undertaken in order to enrich the crown and the

²⁵Montchrétien, 306-308.

²⁶ For further views of Montchrétien concerning the duties of the King, the people, the Estates General, the finances and the laws, all of which are closely related to Richelieu's ideas, see Montchrétien, 336-354.

²⁷ Montchrétien, 3, note. An interesting comparison might be made of this quotation of Montchrétien's with one of Richelieu's, regarding the government. "Si la nature des disorders ou vous vivons maintenant portait que vous fissiez deux reformatiions différentes, l'une à l'appétit du commun, et l'autre par les vrayes maximes d'état et de police que l'usage des affaires vous apprend je ne doute point que le semblable n'arrivast."

Richelieu: "Il semble, fait dire Richelieu à Louis XIII dans le preambule de la declarations de 1641, que l'establissement des monarches estant fondé par le gouvernement d'un seul, cet ordre est comme l'âme que anime et que leur inspire autant de force et de vigueur qu'a et de perfection."

state. There seems to be no doubt in the mind of Montchrétien's editor that Richelieu did read the work. "Richelieu," he said, "was the deputy of the clergy at the Estates General when Montchrétien published his treatise, so not only the industrial and commercial measures of the Cardinal, but also the maxims on commerce, the marine, and manufactures which one finds in his *Testament Politique*, reflect the spirit of Montchrétien."²⁸

Other writers have similar views on this issue. For example, one maintains that Richelieu's theories concerning commerce and navigation were not original. "He borrowed or derived them from documents of the reign of Henry IV, of which the cahiers of the assembly of notables of 1617 and 1627, and the Estates General of 1614 were one source and Montchrétien's *Traicté d'Oeconomie Politique* was another, from which the Cardinal obtained many of his views."²⁹ Another writer brings out the fact that Montchrétien provided the colonial formula for Richelieu to follow. "As regards colonial companies," he says, "Montchrétien recalls the methods followed by Holland and England, forestalling Richelieu or rather giving him a formula."³⁰ (He refers to the Cardinal's speech at the assembly of notables, to be taken up later.) Montchrétien claimed that there was no better way to carry on colonies than by societies such as Holland used, or a council of many individuals instead of one individual effort. So colonial exploitation by privileged companies is the means advised by the economist. He is thus in that respect the inspirer of the political economy of Richelieu. He has formulated all the economic principles of the seventeenth century and is the first and the most penetrating of the seventeenth century economists. This study will attempt to show how Richelieu took up many of his ideas and tried to put them into execution.

That the Cardinal ever read the book is not known because he has never, so far as can be ascertained, mentioned the name of Montchrétien in his writings. The similarity, however, between the views of the two would indicate that the Cardinal

²⁸ Montchrétien, Introduction, XX-XXI.

²⁹ Pigeonneau, II, 381-382.

³⁰ Deschamps, L., *Histoire de la Question Coloniale en France*, Paris, 1891, 61-62.

did so. The letters and memoirs of Richelieu prove that he was interested in these problems, and the fact that he favored literary efforts of all kinds, and would be likely to read a treatise dedicated to the Queen Mother and her son Louis XIII, strengthens the probability of his having read it. The important deduction to be made is the existence of a general economic tendency both theoretical and practical in France when Richelieu came to power. The mercantilistic doctrine with the state as a center was the natural commercial philosophy for a statesman to follow. And while this statement might seem to detract from the originality of Richelieu's beliefs, this is not so when one looks into the matter. For, although a man may not conceive a view, it takes a certain amount of genius and originality to make the practical application. The ideas of Montchrétien required economic statesmanship of a high grade. (An inquiry may now be made whether the Cardinal possessed that quality together with his political capacity.) Was Cardinal Richelieu not only a political but also an economic statesman? To what extent did he continue the practical accomplishments of Henry IV and Sully, and carry out the theories of Montchrétien?

CHAPTER III

THE ECONOMIC RELATIONS EXISTING BETWEEN RICHELIEU, THE KING, AND THE THREE ESTATES

Richelieu from the first took the tasks confronting the King, the people and himself with intense seriousness. Dominated by his paternalistic conception of the King as the father of the people, responsible only to God, he desired to do everything he could to enable the King to build up a strong mercantilistic state of which he was the sole owner. In his general scheme of government all classes had their particular places and obligations. This idea was true even of the Cardinal himself. Loyal to the individual who could alone represent the French nation, whom he loved so well, the Cardinal at the beginning pledged his fidelity saying, "I will do all that will be possible, for, by following the good inclinations of the king, one receives an assured repose, the fruit of the service which I render his majesty according to my duty."¹ In his *Testament Politique* he recalls his first ambitions when called to office. "As soon as your majesty was pleased to admit me into the management of your affairs, I resolved to use my utmost efforts to facilitate your great designs, so useful to the state and glorious to your person."² One sees from the start the constant strife to obtain all advantages possible for the king and the state, and no better illustration can be given of the unselfish interest of the man apart from personal gain than his constant fidelity to his ruler and the latter's welfare.

Richelieu did, to be sure, look after his own personal fortune. His "Will and Testament" proves that he left great wealth,³ most of which he bequeathed to his relatives. It also shows

¹ Richelieu, A. J., Cardinal, duc de, *Lettres, Instructions Diplomatiques, etc.*, Ed., G. Comte d'Avenel. Paris, 1853-1877, III, 159.

² Richelieu, *Testament Politique*, 1, 8-9.

³ Richelieu, *Mémoires*, X, 122.

his own personal commercial ability. A good share of his money, land, etc., was obtained by gifts from the king. He refused, however, many attempts of the rulers to bestow pensions on him, and indeed maintained that at the court the minister must not think of making a personal fortune but must plan only for the development of the welfare of the state,⁴ which he must have seen would in the end benefit him. Yet it is clear that the Cardinal looked upon his office as meaning something other than a mere money making proposition and a means of obtaining high honor.⁵

In 1624 Richelieu came into power as first councillor. At once he began to carry out the duties of his office according to his mercantilistic belief, by recognizing the two elements which he must consider and whose welfare he must constantly promote by advice and deeds, namely, the king and the people, or the king and the state (including the people). "The greatest obligation of a man is the saving of his soul," he says, "the most important duty of the king is the repose of his subjects, the conservation of the state in its entirety, and the welfare of his government; for which reason, it is necessary to put down so severely the injuries done to the state, that the severity of the vengeance will prevent a recurrence. The repose of the state is the dominant thing."⁶ The welfare of the nation, politically and economically, is the main theme of all his writings. Indeed, he says that the king has the right to do anything, even though it is against religion, to save his state.⁷ No better expression can be given of the political and economic ideas of Richelieu. One even finds a tinge of the conception of a larger field than the mere state, when he says that the king must be liberal but only at the right time. He must reward merit. For that not only does the public but the entire world a service of which the reward to the state is only a partial return of the huge interest.⁸

The works of Richelieu revealed a suppressed fear of the inability of the king to look out for the country. The reason for

⁴ Richelieu, *Lettres*, III, 204-205.

⁵ Richelieu, *Testament Politique*, 1, Introduction, 4-5.

⁶ Richelieu, *Mémoires*, XXII, 15. *Lettres*, II, 168 et seq., III, 159.

⁷ *Ibid.*, XI, 285.

⁸ Richelieu, *Lettres*, III, 196.

this state of mind is clear when one remembers the political weaknesses which existed through the youth and ineffectiveness of the king, as well as the unfortunate economic condition of France in 1624. The king's power was in a bad way. "Indeed some people even brought up the idea of electing a ruler. But the majority with Richelieu believed that the absolute power of the ruler was best for the welfare of the country. He made the king the incarnation of public safety and interest."⁹ The Cardinal in his *Testament Politique* has clearly stated his position as related to the king when he says that the ruler must act according to reason and public interest. In this respect he would choose men to carry out those things he could not do. By their working together, he had no doubt that the greatest good for France would result.¹⁰ "For," he says, "nothing ought to divert us from a good enterprise. We must do all we can to carry through those things we undertake with reason."¹¹

Thus one cannot fail to see the common, though unconscious, economic conceptions of that time which dominated Richelieu in his ideas concerning his duties as minister, and those of the king his master. It is a mercantilistic state he pictures, with the king as its earthly owner. Therefore it is the chief concern of those who govern this piece of property to see that the people who work on it, namely the subjects, are taken care of; that their welfare is aided, and also that the state in a national sense is to be developed to its fullest extent. By doing so a strong state would be created, a credit to its king and its ministers, whose constant aim must be the welfare of France. What was his attitude with regard to the Three Estates?

Richelieu, following the traditional French scheme, divided the people of France into three classes and considered all individuals as related to one of these orders.¹² They were the nobility, the clergy, and the third estate, which included the rest of the people. However it is an interesting fact that the Cardinal looked

⁹ Caillet, 26.

¹⁰ Richelieu, *Testament Politique*, I, 197-199.

¹¹ *Ibid.*, I, 265. Richelieu's efficiency in governing is best illustrated in that part of the *Testament Politique* in which he advises the King to consider the important things and not to bother with the details. See Richelieu, *Testament Politique*, I, 195.

¹² *Ibid.*, I, 182.

upon all these classes as constituting one people, and when he attacked any class or sect of individuals, such as the Huguenots, he did so for the public good, that is, the benefit of all. As a consequence it was said that while the general public praised him, individuals hated him and tried to bring about his fall.¹³ His efforts to reform the finances and to build up commerce and colonies were, in general terms, the lines along which he tried to aid the people, instead of particular groups. Centralization of the government was the only efficient way by which they could be benefited. His efforts to bring this about illustrate only too well the economic and political purposes involved. Yet in treating the people as a whole he had to consider their various classes and the rights due to each.¹⁴ He recognized the system as being for the best, but in doing so he constantly had in view the welfare of the state. The class in which he placed the highest hopes were the nobles, who he believed were destined to play the leading part in the destinies of France.

In his treatment of this section of the population of his native land, the Cardinal had constantly in mind the welfare of the nation. This is shown by the fact that he confronted and attempted to solve two problems with respect to them. Namely, first to prevent them from being politically independent of the central government, and secondly, to make them useful members of society and the state. What he did with respect to depriving the nobility of political rights will be taken up in the next chapter. But one might add, that when Richelieu ordered in 1626 the razing of the castles and chateaus of the nobles,¹⁵ a measure which was the outcome of his opposition to the separate political power of the nobility (which began as far back as 1617),¹⁶ he changed the entire economic policy of France, not only in the increase of internal freedom of trade but in the altered position of the noble class.¹⁷ They were no longer independent of the central government socially, politically, or eco-

¹³ Richelieu, *Mémoires*, XXIV, 191.

¹⁴ Richelieu, *Testament Politique*, I, 81.

¹⁵ Isambert, A. E., *Recueil Général des Anciennes Lois Françaises, etc.*, 29 vols., Paris, 1829, XVI, 192-193.

¹⁶ Richelieu, *Mémoires*, II, 6.

¹⁷ Rambaud, A., *Histoire de la Civilisation Français*, 2 vols., Paris, 1898, I, 574.

nomically. They were subject to the will of the state. This concept was just a part of the plan of Richelieu "to put down the turbulent nobles and obtain by that means repose for the common people, prosperity for the king, and increased grandeur for the monarchy."¹⁸

However, when Richelieu had deprived this class of people of their independent powers, he did not oppress them and try to push them down into the lower estate. On the contrary he favored them. He looked at them not only from a political but also from an economic point of view; and saw in them "one of the principal sinews of the state, capable of contributing much to its conservation and establishment."¹⁹ In fact he and the king shared the same views, for the latter called them "the right arms of the state."²⁰

Richelieu tried to make a definite use of the nobles. He saw that they could fit into certain positions, especially those which were rewarded with many honors. "His ability to converse with the world, etc. . . . all adapt him to certain functions."²¹ So that if Richelieu wanted to deprive them of their political right to oppose the government, he also desired to find a method by which they could live with dignity and serve their country both in a political and economical sense.

Not only Richelieu but many of the nobles themselves desired a part in the upbuilding of France. In a statement of their condition presented to the king by the assembly of notables in 1627, one obtains a fair idea of their ambitions. The exposition begins with an account of the distressing condition of the nobles, who are without any power or purpose. They then ask for the reestablishment of the nobility "as the greatest power to upbuild France, and to remedy its miserable condition." Mention is made of their former splendor and service. They are now in poverty and without power and are oppressed. Unwarranted abuses by some of their number (by many as a matter of fact) has deprived them of the administration of justice, finance, and all the councils of the king. "Aid us, and put us in our former place, and the kingdom will gain thereby

¹⁸ Richelieu, *Mémoires*, XI, 244-256.

¹⁹ Richelieu, *Testament Politique*, I, 141.

²⁰ *Mercure François*, XVII, 65.

²¹ Richelieu, *Testament Politique*, I, 141. et seq.

and your reign will be more glorious and have a greater splendor.”²² However they showed their selfishness when they asked for control of governmental, church, and army offices and other unreasonable favors. The fundamental thing was that they desired a more active part in the government. “Herein is where Richelieu erred,” says one writer, “in not giving them a more important place in the administration of the government, as a way of safe-guarding the right and well being of the nobility.”²³ Yet, judging from their demand it is doubtful whether the nobles ought to have been considered. Nevertheless the Cardinal did make efforts to use them for the good of the nation.

He devotes a section of the *Testament Politique* to the different means of aiding the nobility and making them subsist honorably. “They must be respected,” he says, “as one of the principal sinews of the state, capable of contributing much towards its preservation and settlement. Having been injured by vast numbers of business men, who have been elevated at their expense, it is my duty to protect them against any attempts of such individuals. Yet the people under the nobility must be protected from certain offices. It is a common fault in those that are born in a certain order to exert violence against the people to whom God seems to have given arms with which to get their livelihood rather than to defend themselves.”²⁴ In this statement one sees the entire attitude of Richelieu. He did not oppose the nobility because he had any prejudice against them, but he did stand against them in so far as they were a detriment to the whole state in that they interfered with the economic contribution of the third estate, one part of the country.

In order to aid them he carried out several of the demands of the assembly of notables. For example, he established a military school for young nobles, who were to be trained to administer and develop the nation within and extend and protect it abroad.²⁵ They were to have a part in the government, but were to be trained for their work and could only keep their positions by great services and superiority of ideas.²⁶ The

²² *Mercure François*, XII, 40-46.

²³ Pigeonneau, II, 376-377.

²⁴ Richelieu, *Testament Politique*, I, 141-146.

²⁵ Isambert, XVI, 466-470.

²⁶ Caillet, 122.

very fact that the nobility realized this made them ask for the military school. This request was an effort to stay the decadence of the class.

Efforts were made to aid the nobles in other ways. Many were given good positions and favors to keep them in line with the government. For example, "Chateauneuf was granted a better governmental position in spite of his bad intentions toward the government."²⁷ "Indeed," Richelieu says, "common people were replaced by nobles in the king's household because it would increase the number of those who are to help the people bear the burden of taxation, which they are overwhelmed with at present."²⁸ This is an economic way of looking at the problem. The Cardinal was willing to do all he could to help the poor people, but he regarded the privileges of the nobles as something necessary and a part of the natural order of events.

The fact that the Cardinal desired the nobles to enter all phases of French life and thus, through their abilities, help in the development of France, is best illustrated by his provision that they were to be allowed to engage in commerce without loss of honor.²⁹ Moreover, individuals were ennobled because of their successful colonial or commercial ventures. He thus strove to bring the exclusive order down to the everyday phases of life, and while he recognized their privilege, he wanted them to retain these only in so far as earned by economic or political efforts. The ultimate goal was to be of course the building up of the state. He really intended to make this class the brains and administration of the country. The older men were to formulate the plans of government and the younger men were to carry them out.³⁰ He desired to use these men as official agents in the development of France politically and economically as well. The inefficient corrupt character of the members of the noble class prevented the success of the plan, and in the long run brought on the French Revolution and their ruin. They wanted a political pension and not an economic position.

But after all, the great thing that Richelieu accomplished with respect to the nobles was to ruin their individual

²⁷ Richelieu, *Testament Politique*, I, 40-45.

²⁸ *Ibid.*, I, 215-217.

²⁹ *Mercurie François*, XII, 36 40.

³⁰ Richelieu, *Testament Politique*, II, 24 25.

political power and open to them opportunities to serve the state politically or commercially, a course of action certainly worthy of a statesman. That he weakened this class by adding to them by means of the creation of titles because of activities in the field of literature or in the field of commerce, is very true. But what better proof is there of his economic tendencies? He realized that the sale of offices to the nobles was bad and tried to stop it, but he could not bring about a reform in one night, as he admitted.³¹ In opening to the nobility the chance to engage in political or commercial opportunities whereby the state was to be strengthened, he acted in keeping with his economic and political views,³² and with the fundamental theory of mercantilism.

The same viewpoint was true with regard to the clergy, "In conformity with his doctrine of the state, Richelieu opposed ultramontanism and proclaims," says one writer, "the absolute independence of civil power and the necessity of a national clergy."³³ To be plain the Cardinal desired the clergy to join their interests with those of the nation. In fact the church had something more than a religious influence in France at that time. "It was an age of hospitals and schools which were conducted by the clergy. They were the leaders of philanthropic work."³⁴ Richelieu as Bishop of Luçon was well aware of the importance of that class, and indeed tried to use his position to diminish the oppression of the common people. Thus he wanted them to use their powers for the interest of the state and its economic and social betterment. Indeed, he said that he preferred the welfare of the king and the grandeur of the state to the interest of Rome, even though he was of the clerical order. That in brief explains his attitude. He desired a national clergy.

On the other hand some of the clergy recognized this position taken by the Cardinal. They appreciated the fact that he desired the unity of all the people in France for their common conservation. "Your majesty," said one of their representa

³¹ Richelieu, *Testament Politique*, I, 165-167.

³² *Ibid.*, I, 141-147.

³³ Caillet, 55.

³⁴ *Ibid.*, 60-62.

tives, "treats offensively and defensively, solely for the protection of the altar of France from the enemy." They outwardly, at least, then joined the king and his administration "whether it would be to keep up commerce or preserve the security of the state in common defense, knowing that the sovereign law of political government is the safety of the people."³⁵ Thus they promised to do all they could to keep up the glory of the state. This action indicates that at least a part of the clergy appreciated the attitude Richelieu took towards them, and wanted to "do their bit" towards developing the nation, even in keeping up commerce.

Richelieu considered the clergy as being capable of serving in other capacities besides the religious side of affairs. (Doubtless he was thinking of his own case.) For instance, he says that the churchmen are best for public tasks because they have less self-interest and other distracting influences such as families.³⁶ Economically speaking he desired to get out of them the most possible for the aid of the central government. However he believed that their important function was on the religious side. Herein he admits that many reforms are needed such as an effort to get good bishops, to change the system of appeals and courts, unjust exemptions, etc.³⁷ "In fact," he writes in a letter, "the King must be obeyed, by great and small, and he must fill the bishoprics with wisely chosen and capable men."³⁸ While admitting the importance of learning and of its propagation, he desires to see the monasteries limited in number, as well as other religious houses, because of the fact that there is a loss, probably economic, in having too many of them.³⁹ So he forbade the establishment of any more without the consent of the king.⁴⁰

In conformity with his plan to get all he could out of the

³⁵ *Mercure François*, XVI, 527-528.

³⁶ Richelieu, *Testament Politique*, I, 304.

³⁷ *Ibid.*, I, 62-63.

³⁸ Richelieu, *Lettres*, III, 181.

³⁹ Ranke, L. von, *Sämtliche Werke*, Leipzig, 1874, IX, 212. Ranke says that Richelieu diminished the number of monasteries as they were a hindrance to trade or business.

⁴⁰ Isambert, XVI, 347.

clergy, especially the upper strata,⁴¹ he tried to obtain as much financial support from them as possible. For example, in 1628, he requested money for the upkeep of the army and navy. By giving some, the clergy would relieve the common people. So they granted three millions of *livres*.⁴² He would have liked to exclude them from exemptions of taxes.⁴³ On other occasions he demanded certain amounts of money from the clergy and they objected. Busy with his European wars he permitted them to hold a council and decide what they would pay and he accepted it, as he had other matters which kept him busy.⁴⁴

As will be shown later, Richelieu opposed the Huguenots not on religious but on political and economic grounds, except that he encouraged their individual economic prosperity. This opposition was just a part of that central theory of state building which he carried out so well, and of which not only the nobles and clergy but the Third Estate was a part.

Richelieu regarded the Third Estate from the same point of view as the nation, and for doing so he has been condemned. One writer says that Richelieu always sacrificed the well being of the population to the grandeur of the nation without thinking that there was no more true and solid grandeur than in the union of these two factors, public prosperity, and national glory. In fact he accused the Cardinal of having no true love of the people. And whereas the latter followed Henry IV in his attempts to build up the state he did not imitate him with respect to the improvement of the welfare of the people, which was one of the aims of his predecessor.⁴⁵

Now it is quite correct to say that the Cardinal built up everything for the interest of the state. That was the central part of his political and economic philosophy. He recognized the people as constituting a part of the great nation and consequently they must be aided as a class. He looked at them

⁴¹ Bonnefon, P., *La Société Française du XVII^e Siècle*, Paris, 1903, 85. Richelieu neglected the lower clergy, probably considering them a part of the Third Estate so far as social standing was concerned. In this he made a mistake.

⁴² *Mercure François*, XIV, 179.

⁴³ Caillet, 83 et seq.

⁴⁴ *Ibid.*, 87.

⁴⁵ Richelieu, *Lettres*, I, Introduction, CIII, CIV.

from the cold, calculating point of view of the statesman and economist, who believes that you must build up all the parts in order to increase the grandeur of the whole, but care must be taken to have in view constantly the whole rather than to weaken common advancement by an undue emphasis placed upon some part. This was his theory with respect to the relations of the people to the state and even with regard to the relation of individuals to the people as a whole. For example, he says in his *Testament* toward the end of his life that the public interest ought to be the goal of those who govern the state, or at least the mass should be preferred instead of individual people. He cites Spain as an example, as having been made great through emphasis on the people as a whole. "By means of reason and justice this should be the method of councillors and kings of the future."⁴⁶ He asks the future government to consider the welfare of its peoples but in doing so he says, "all classes should stay in their proper boundaries, and thus trouble would not arise."⁴⁷

In spite of the fact that Richelieu is considered to have had no personal sympathy with the people, but instead appeared to base all his ideas upon problems concerning the welfare of the state; nevertheless, he did have human sympathy for them. He realized their difficulties and would have liked to solve them. He tried to do so but he knew that the strongest means to obtain aid for the people was through a strong nation. That is why he put the latter doctrine to the front, even though the citizens had to suffer temporary oppressions. It was done with the hope of better conditions for the common people in the future.

Richelieu was a farsighted man. He admitted the sufferings of the people due to the wars, but he saw the benefits to be derived in the future because of them, not only by the king but by the people as a body. "War," he says, "is for the best interests of the people as a whole in that it keeps the state from ruin."⁴⁸ In another place he says that the interest of France is the interest of its citizens, and the most important obligation of a king is the

⁴⁶ Richelieu, *Testament Politique*, I, 267-270.

⁴⁷ *Ibid.*, 181-182.

⁴⁸ Richelieu, *Mémoires*, XXVI, 87.

repose of his subjects and the conservation of the Kingdom.⁴⁹ He admitted that war made the people suffer, and he tried to prevent it when possible. However, he also recognized the fact that the average individual could not understand the ultimate benefits to be derived by war and thus was apt to oppose it at inopportune times. "The miseries and afflictions of the people of France," he says about 1630, "who have suffered under very great and almost incredible poverty, made peace a desirable thing, and the king as their king and father was obliged to urge it. The frequent disorders taking place in many towns brought up the fear of a continuation of the war, because of the need of more money to wage it. The people in general, especially merchants, blamed the government for heavy taxes, etc." In conclusion it is interesting to note that he says the king as their father was obliged to seek peace for them.⁵⁰

It is quite evident that there was a strong peace party in France, led by the merchants, who did not like to pay the bills of war. Yet the problem resulting seems to explain why Richelieu did not take active steps to aid the people at this time. In fact he could not. The political and economic status of France as related to other nations had to be settled first before he could attend to the internal economic problems confronting him. He had to develop his foreign commercial policy first and then his internal commercial program. He could only accomplish the latter when the general status of France in the world at large was established. This task occupied the last ten years of his life. Only a beginning could be made with respect to internal affairs, although throughout his administration he was at least sympathetic toward the common man.

One of the most important phases of Richelieu's career is his bishopric of Luçon. The very fact that he was a churchman, and a conscientious one at that, tends to indicate that he must have known about the unhappy conditions of the people. That he did was also shown by letters written during his administration as bishop. In 1608, when he first became bishop, he wrote to the people that "time will show the affection which I bear toward you, more than words can do. It is for that

⁴⁹ Richelieu, *Mémoires*, XXII, 15.

⁵⁰ *Ibid.*, XXVI, 86-87.

reason that I wait for deeds to let you know that all my attentions are for your welfare." ⁵¹ He follows this up a few days later with a letter to the local tax collector, protesting against the unfair assessment of taxes, bringing out the misery and poverty of the inhabitants from the excessive *tailles*, etc., and he closes with a plea for moderation of the taxes and equalization among the different sections of France. ⁵² This letter is followed by another the next year (1609) to a high official (probably Sully) asking him to aid the poor by a reduction of their taxes.

When he became secretary of war in 1617, he desired to aid the poor people. Also in 1627, at the assembly of notables he again advocated attention to the welfare of the common people. ⁵⁴ He said that the greatest thing that a king can do is to protect public faith, as it is an inalienable friend which is always to be found present. He made the assertion that the people who now contribute more of their blood than their sweat to the expenses of the state should be aided. "In proportion as you help the people and better their condition, the more you can obtain from them." ⁵⁵ This certainly is a sound economic doctrine and shows that the Cardinal appreciated the fact that improved labor conditions would bring better results.

In 1627 Richelieu was advocating the uplifting of the common people to a surprising extent. One writer states "that he even said, that he was to do it all in six years." ⁵⁶ Unfortunately he was not able to carry it out before his death. That he believed in it in theory to the very last was shown in his *Testament*. "This does not excuse him," says d'Avenel, "why did he not aid them during the period 1627 to 1642?" ⁵⁷ He did to a certain extent, as will be shown in the chapter on finances. But one must remember that during that time France was involved in a great European war, to preserve her economic and political status as a nation: that she was trying to overcome

⁵¹ Richelieu, *Lettres*, I, 15.

⁵² *Ibid.*, 1, 18.

⁵³ *Ibid.*, I, 20.

⁵⁴ *Ibid.*, I, Introduction, CII-CIII.

⁵⁵ *Mercurie François*, XII, 790.

⁵⁶ Richelieu, *Lettres*, Introduction, XCII-XCIII.

⁵⁷ *Ibid.*, Introduction, CII-CIII.

internal political troubles; that a certain amount of territory and centralization of government was necessary before the finances could be improved; and lastly, that the great Cardinal was hindered by numerous petty plots of individuals which disturbed the nation during the entire period. What chance did he have to fund a debt or attempt any important internal reform?

The center of difficulty in regard to the third estate was of course the heavy taxes. Between 1627 and 1632 he intended to discharge the people from the burden of three millions of *livres* and asked them, in recognition of this desire on the part of the government to aid them, to keep the peace.⁵⁸

The same idea is brought out in his *Testament*. He says that the public welfare should be the only end of those who govern the state. "If private interest is preferred to public good then harm is done. But if the public interest is the first concern, then the state will be happy and escape miseries. The particular interest of the king and the people go hand in hand. We must therefore aid the public and prepare for their preservation."⁵⁹ The means to do this was to be the reform of the finances, for he says, "If the finances are properly arranged, the people will love him out of pure personal interest. This affection is very important to a king. It is worth more than gold or silver."⁶⁰ In other words a king cannot do much with his money without the love of his people, — a rather business-like way of beginning the problem. And he not only states it but tries to solve it by proposing to reduce the revenues demanded of the people by three-fourths. This will be taken up in a later chapter.⁶¹

Richelieu has been criticised for his economic conception of the common people. He has brought out this idea in his treatment of the question of the relation between the amount of labor a man should do and his physical strength. "In regard to this problem," he says, "all authorities agree that when the people are too comfortable, or have too easy a time, it is impossible to keep them within the bounds of duty, because they are more

⁵⁸ *Mercurie François*, XII, 36-40.

⁵⁹ Richelieu, *Testament Politique*, I, 267-271.

⁶⁰ *Ibid.*, II, 115-117.

⁶¹ See Chapter V, 73-81.

ignorant than the other classes, and to keep them within the limits of reason and within the law, they must be kept occupied. If discharged from their duties or obligations, they would think themselves released from obedience, like mules used to burdens. But like these animals, their burdens must be moderate. The common people need protection. Common sense must determine the proportion between the burden and the strength of those who bear it. The relation of the loads and the ability of the people must be religiously observed. A prince cannot be esteemed good if he exacts from his subjects more than is necessary. Yet those people are not the best who never raise more than is absolutely necessary."⁶² This passage seems to indicate the economic turn of the Cardinal's mind as no other part of his work does. He desired efficiency in France. He wanted her to produce a surplus. His idea was a strong nation built up of healthy, busy people who would work and produce so that France could become a great political and economic power. To bring this about he even went so far as to advocate extra taxation of the rich. For he says, "Sovereigns must, if possible, make use of the abundance of the rich before they bleed the poor."⁶³ This remark has a socialistic tinge which is rather out of place in the seventeenth century. No, it does not seem fair to say that Richelieu was unsympathetic with the common people. He really tried to aid them not only financially and politically, but commercially as well. Richelieu was a business man and the welfare of France was his business.

The development of the economic side of France was one of the most important phases of his administration, and, indeed, affected the common people by bringing on what might be called a social revolution. "Richelieu," says a writer, "has been, without wishing it, one of the most powerful agents of that economic evolution and social change, which tends little by little to level the ranks and which left to the nobles no other superiority except that of privilege. The commercial man no longer resembled the trader of the past with his simple and rude manners, who busied himself with his cloth, etc. and passed his life in going from town to town with goods on the backs of

⁶² Richelieu, *Testament Politique*, I, 179-182.

⁶³ *Ibid.*, I, 181-182.

his mules. Now, often raised in his calling to the side of some magistrate's son, he was no longer a merchant but the head of a firm of speculators, who had his departments and his correspondents at Cadiz, London, Frankfort, etc."⁶⁴ "Big business" was beginning at that time. Richelieu did all he could to encourage it by allowing the nobles to engage in it without losing their rank and also by creating nobles from those of the third estate who made a success of commerce and permitting them to join the royal court.⁶⁵ Efforts were made to reestablish commerce, to renew and amplify its privileges, and to bring it about that the profession of trade should be honored by the people.⁶⁶

As a result of the increase in commerce, class feeling was engendered. It caused trouble between the nobility and the common people, in that the nobles claimed that they were better than the common man even though they engaged in trade. Also, the third estate did not want the privileged class to engage in commerce and protested about it. Lastly, the rise of many middle class people to the ranks of nobility can be noticed as a result of this economic and social change.⁶⁷ The middle class began to assume a place of importance so that even Richelieu was forced to try to influence them in his *Mercure François*, the first so-called French newspaper.⁶⁸

In conclusion, Richelieu's attitude toward the King and the Three Estates was that of a mercantilist. The latter were a part of the state of which the King was the father or owner. As his overseer the Cardinal's chief duty was to build up the state, although he was keen enough to see that this really involved the welfare of the people of France. As a result, he had a sincere interest in their betterment,⁶⁹ and by his many accomplishments he helped to prepare the way for the social and economic, as well as the political, changes which came later. No better phrase can illustrate the Cardinal's deep and heartfelt

⁶⁴ Pigeonneau, II, 456-458.

⁶⁵ Isambert, XVI, 527.

⁶⁶ *Mercure François*, XII, 36-40.

⁶⁷ Levasseur, E., *Histoire du Commerce de la France*, 2 vols., Paris, 1911, I, 259.

⁶⁸ Deschamps, 129.

⁶⁹ Richelieu, *Testament Politique*, I, 180 et seq.

interest in them, than the close of that section of his *Testament* dealing with the third estate, in which he pleads with the king to consider always their interest, and affirms that nothing would give him greater pleasure than to have the king try to carry out, after his death, what he has tried to do when he was on earth; namely, to build up a strong state and a happy people therein.⁷⁰

⁷⁰ Richelieu, *Testament Politique*, I, 180 et seq.

CHAPTER IV

THE ECONOMIC ASPECTS OF RICHELIEU'S POLICY OF CENTRALIZATION

Richelieu, when he came into power in 1624, realized that if he was to make the King supreme and build around him a great state, he had to take steps that would lead to the centralization of all internal political, social, or economic forces, under direct or indirect control of the royal government. "The Huguenots shared the Kingdom with us," he said, "and the nobles conducted themselves as if they were not subjects of the King, and the most powerful governors of the provinces as if they had been sovereigns of the Kingdom."¹ All this, he claimed, diminished the authority of the King.² People looked after their own interests rather than the state, and this neglect on the part of the king's advisers caused great injury to the development of France. To strengthen the power of the Royal House in internal affairs was his first problem. It was the only way to develop the nation. That Richelieu devoted his personal attention to this side of the development, and left Father Joseph to carry on the major part of the political questions of the Thirty Years' War, indicates the importance he placed upon this phase of his administration.

Now to bring about a thorough internal change, he had to remove all troublesome obstacles, which involved naturally the accumulation of power in the hands of the King and his Prime Minister, the destruction of the political independence of the nobles and Huguenots, and the centralization of all local forces under the direct or indirect control of the King and his government, especially the chief Councillor, who was to be a very important officer.

Richelieu has left ample evidence as to the qualifications of a chief minister of the King. He must have in mind constantly his duty to the King and to the state. There should be more

¹ Richelieu, *Testament Politique*, I, 6.

² *Ibid.*, I, 7.

than one councillor to advise the ruler, but one should be above the others.³ "However," he says, "this man should have public approbation, for if everybody likes him, he will be most able to do good."⁴ This minister should be able to advise the King in all the phases of government. Louis XIII understood the vast importance of the Cardinal.⁵ Indeed, he even permitted him to have a deliberative voice in the *Parlement* of Paris, just as he had in the council of state.⁶ As the king's chief adviser he had access to all the parts of the French government. He was supreme. All was centralized in his hands, subject of course in theory to the final word of his master.

However, it is interesting, and important to notice, that the office upon which Richelieu laid the most emphasis was that of "grand master, chief, and general superintendent of the navigation and commerce of France." The fact that he obtained it during the early part of his administration brings two important points to light, namely, the economic interest of the Cardinal, and the means by which independent nobles, governors, and other powers were removed in the interest of centralization. It was the first great step by which Richelieu could carry out personally his political and economic program.

Bad internal conditions made this necessary. "There existed in France," says one writer, "two institutions incompatible with the unity of ministerial power, as with the order and finance and administration. They were, first, the jurisdiction of the high *connétable* of France and secondly, the office of the admiralty."⁷ Both were suppressed. Richelieu in his *Memoirs*, mentions the abuses brought about by Montmorency, the last of the *connétables*. The office and its mate the admiralty, which had as much power on the sea as the former on the land, were suppressed, "because," he said, "they weakened the control of the King and were harmful to the finances, which were the ordinary expense of war, together with that of the local officials of that department."⁸ The admiral had, likewise, large sums of money

³ Richelieu, *Testament Politique*, I, 232-240.

⁴ *Ibid.*, I, 244.

⁵ Bonnefon, Introduction, II.

⁶ *Mercure François*, XIII, 365.

⁷ Martin, H., *Histoire de France*, 6 vols., Paris, 1861, II, 244.

⁸ Richelieu, *Mémoires*, XXIII, 212-213.

to spend on the navy. The question raised was as to whether or not they expended the money as it should be spent. It was quite evident from the complaints of the soldiers and others that much of it was wasted, and that, as a result, their finances were in bad shape. Naturally, this led to the suppression of those offices in the interest of the state. It happened that in 1627 they were both made vacant by death, so that by abolishing them the people were to be aided by decreased expenditures.⁹ This was the view Richelieu desired the people to take. It is interesting to notice how, in carrying out all his great acts, he constantly appealed to the effect upon their purses. He desired to get control of the armies on land and sea, but wanted the people to look upon it as an economical change for their benefit. His aim was not only along financial lines, however. He desired to build up the commerce of France, and this office enabled him to do so without local hindrances.

But just what were its duties? The answer to this question gives a clue to the economic policy of Richelieu. "In the first place," says the edict, "he must treat with all kinds of persons. He must look over propositions of our subjects relating to commerce, decide concerning the merit, utility, etc., of all agreements, articles, contracts, etc., concerning the sea and its enterprises. . . . He is to look after commerce, which is so useful to France. Our navigation rights and sea enterprises are under his charge. All those embarking on sea trips, can now go to him for permission. Before this no one knew to whom to go. All the evils of the marine are to be removed, etc."¹⁰ The Cardinal was to have full charge of navigation, the advancement of commerce, and the security of Frenchmen on the seas, in times of peace. In times of war, other offices might be created.¹¹ The importance of this office can only be appreciated when one realizes that it put the control of commerce fully in the hands of Richelieu, and indicated that this part of his administration was to be one of the dominating factors of his career. Trade was to be fostered by it for the honor and grandeur of the state and the profit and increase of public wealth.¹² It was

⁹ *Mercure François*, XIII, 354-358.

¹⁰ *Ibid.*, XIII, 361-362.

¹¹ *Ibid.*, XIII, 362-364.

¹² *Ibid.*, XIII, 359-360; XIV, 4-46.

clearly a part of his centralization policy. Indeed, says one writer, "Richelieu took the control of the maritime provinces away from local governors, and concentrated it in his hands, in order that it should grow at an astonishing rate."¹³ He realized that centralization in time of need meant efficiency and quick results. This is what he wanted on the economic side of his administration. The office, really that of secretary of commerce, marks the first great step taken in the economic development of France, and it is an evidence of Richelieu's unselfish motives that the first abuses which he remedied were those by which he might have profited. He would take no pay for his duties in this office, nor would he take a share in the salvage.¹⁴ Yet he had enough economic shrewdness to know that he would benefit financially by other means, of a more quiet nature.

However, this mercantilistic policy of centralization, which the Cardinal used as the dominant keynote of his administration, is to be found also elsewhere than in the changes in the royal government. The unity of the King and the common people against the nobles is a feature which plays a part in this program. The idea was not original with him, for one can see its beginnings in the early Capetian days, and again in the reign of Louis XI, "whose sole aim was to constitute the French nation by removing the incubus, without whose removal its existence was impossible, namely, feudal aristocracy. Thoroughly devoted to looking on the frivolous etiquette of the nobles with undisguised scorn, assuming the dress and society of commoners, Louis XI was the true precursor of Richelieu."¹⁵ Nevertheless, little was accomplished in the way of reducing the power of the nobles until Richelieu's time.

When he undertook the administration of France, he saw the nobles still at their attempts to strengthen feudalism by means of various internal and external conspiracies. He feared a combination of troubles. "What would happen if the nobles or Huguenots united with Spain?" he asked. It is quite evident that he saw the economic as well as the political and religious consequences. For a Spanish victory might and probably would

¹³ Gouraud, C., 193-244.

¹⁴ Martin, II, 244.

¹⁵ Bridges, 16-25.

have meant not only the supremacy of the nobles, but it would have permitted the Spanish Catholic nation to overrun France, thus preventing the political and religious equilibrium which the Cardinal hoped to establish in Europe as a necessary prerequisite for his future plans of making France a great economic as well as a political state.¹⁶

Consequently Richelieu decided that he had to weaken or destroy the political power of the nobles. The destruction of most of their fortresses and castles unnecessary to the defense of the kingdom was the most important step taken to attain this desire.¹⁷ It was brought about with the express purpose of eliminating needless expense, of preventing trouble, and of delivering the people from the inconvenience, both economic and political, which they had suffered from the existence of the local quasi-independent powers.¹⁸ As a result, it made the nobles, the courtiers, and the common people more independent citizens. They could trade with more freedom, and France received a direct economic stimulus through this act. It cut down the expenses of government and made for peace and tranquillity in the land. Therefore, it was a very important economic measure. With the same purpose in mind the Cardinal prohibited the carrying of weapons except by permission.¹⁹ Also, he brought about the edict against duels, on the ground that it was best for the conservation and growth of the state. He said that the general welfare of the people was ahead of the interests of particular individuals.²⁰ In other words, he did all that he could to better social and economic conditions in France for all the people, by depriving certain classes of rights unjustly claimed. This was done with the express purpose of making France grow.

Richelieu did not succeed in his attempts to reform social conditions. The blight of war prevented the fulfillment of this phase of the development of France. Nevertheless, he had initiated a social reform, and was, therefore, in so far, a forerunner of the French Revolution. He left the nobles mere courtiers, and the French Revolution deprived them of all their privileges.

¹⁶ Richelieu, *Lettres*, II, 82-84.

¹⁷ *Ibid.*, II, 320. Caillot, 124.

¹⁸ Isambert, XVI, 192-194.

¹⁹ *Ibid.*, XVI, 175; *Mercur François*, XIII, 399-400.

²⁰ Richelieu, *Mémoires*, XXIII, 294-297.

Richelieu desired the nobles to earn their exemptions. They failed to respond, and this caused their fall.

The Cardinal was not radical in his changes. His was a conservative type of mind. In his reform of the government, in his replacement of officials and removals of nobles in office, he was very slow and exact in the steps he took. "The disorders," he says, "which have been established by public necessities and strengthened by reasons of state, cannot be reformed without time. Changes must be accomplished by degrees without passing from one extreme into another." He then admits that care must be taken in the removal of officials. Efforts must be made to keep them within the bounds of their duty, for the public welfare.²¹ Richelieu was willing to give in to some nobles or provinces in various proportions, if he saw that it was for the interest of the state to do so. Numerous examples can be given, as where he refused to abolish certain taxes because all the provinces would not agree to it,²² and where he exiled the ruler or governor of Rouen and later allowed him to return.²³ "*Les messieurs de Saint-Malo*" refused to permit the King to construct some vessels in their port. The Cardinal showed them that it was for their interest in the protection of their commerce to do so, and promised in return to increase their franchises.²⁴ Richelieu added to or took away the privileges of individuals, with the sole purpose of public welfare as he saw it.²⁵

No better indication that Richelieu wanted to be considered the benefactor of the people can be found than in the dispute over the Cardinal's administration between Richelieu and Gaston, brother of the King. The latter accused the Cardinal of working for his own ends and causing the great misery of the people. In reply Richelieu said that the unfortunate state of the people hurt him. However, he pointed out the fact, that it was largely due to the uprisings caused by Gaston and others, which had retarded him in his efforts to aid them.²⁶ Richelieu

²¹ Richelieu, *Testament Politique*, I, 159.

²² Montchrétien, Introduction, XC.

²³ *Ibid.*, Introduction, XC.

²⁴ *Ibid.*, Introduction, XC.

²⁵ Richelieu, *Mémoires*, II, 217-218; *Lettres*, IV, 200-201; *Mercurie François*, XII, 325-326; XIV, 70-139; 156-160; Isambert, XVI, 339.

²⁶ *Mercurie François*, XVII, 264.

constantly asserted that as soon as the political disturbance inside France should be put down and Spain be defeated on the outside, he would turn his attention toward the aid of the people, "which I so much desire."²⁷ "The King," he says, "has no other aim than the grandeur and welfare of the Kingdom."

Another way by which Richelieu weakened the nobles and aided the people was in the appointment of intendants. These newly created government officials were charged with the management of financial and judicial affairs in the local provinces, but were responsible to the central government. This power had been in the hands of various nobles, who had used their authority for their own personal financial benefit, so that the appointment of these new officials had a distinct economic aspect.²⁸

The reduction of the power of the *Parlements*, especially that of Paris, has an economic interest besides its part in the general centralization idea of Richelieu. He desired them to attend to their judicial affairs, and leave the government alone.²⁹ He did not ask either the Estates General or the *Parlements* to aid him in getting control of the nobility, because both of these bodies supported the party he struggled against, namely, the great landowners.³⁰ Therefore, the destruction of the political power of the *Parlements* as well as that of the nobles was necessary for the centralization of the government, and the aid of the people. According to Richelieu's scheme France was not to have a government of the poor by the rich. It was to be a government by a central hereditary monarchy over both classes. "In other words," says one writer, "feudalism in the hands of Richelieu was concentrated into a single institution, hereditary monarchy."³¹ By this he hoped to do away with most internal and external evils and build up a strong state. No wonder he put down all conspiracies so severely. Indeed, his effort to end the disorders of the court of justice, by having the King appoint men of merit and integrity,³² only serves to illustrate

²⁷ *Mercurie Française*, XVII, 130-133, 192-194; Richelieu, *Testament Politique*, I, 8; Richelieu, *Mémoires*, XI, 349-350.

²⁸ For further information concerning the Intendants, see Chapter V, 84 et seq.

²⁹ Molé, *Mémoires*, 4 vols. Paris, 1855, I, 478-482; II, 3.

³⁰ Bridges, 30-31.

³¹ *Ibid.*, 31.

³² Richelieu, *Testament Politique*, I, 168.

the fact that he tried, in theory at least, to reform all the parts of the royal and local governments, in order to build up a strongly centralized kingdom in which the people should enjoy a happier social and economic life. Practically, Richelieu was apt to favor certain classes in his appointments, as when for example he made the Archbishop of Bordeaux admiral of one of his fleets. The latter was not especially efficient in this new calling. In 1641 the fleet was defeated by a Spanish squadron near Tarragona, and Richelieu admitted that he had made a mistake by removing the Archbishop from command.³³

There was one political element in France which attracted the attention of Richelieu more than any other single factor, on account of its independence and opposition to the interests of the state. It was the organization of the Huguenots. In his Political Testament he says that at the beginning of his administration, he promised the King to employ all his industry and all the authority given him, to rule the Huguenots, etc.³⁴ Their control constituted one of his first problems in carrying out his great scheme of centralization. "It is certain," he said, "that the downfall of La Rochelle, (politically speaking), is the end of the miseries of France and the beginning of its repose and good fortune."³⁵ It was the idea of attaining a future peace and the development of France thereby, which caused Richelieu to take a severe attitude toward these people from the start. "As long as the Huguenots have a foothold in France," he writes, "the King will never rule within and can take no glorious action within or without."³⁶ The destruction of their political power was a necessary preliminary to the welfare of the ideal centralized state.³⁷

Nevertheless, in bringing about this change the Cardinal did not desire to injure the Huguenots personally. "If they stay quiet," he said, "they will be treated as citizens, with the due protection of laws, etc."³⁸ They had a place and value as

³³ Perkins, J. B., *Richelieu and the Growth of French Power*, New York, 1904, 179.

³⁴ Richelieu, *Testament Politique*, I, 8-9.

³⁵ Richelieu, *Lettres*, III, 161.

³⁶ Richelieu, *Mémoires*, XXII, 430.

³⁷ As Bishop of Luçon, Richelieu lived near the Huguenots and thus was well aware of their religious, political, and economic power.

³⁸ Isambert, XVI, 143.

Frenchmen, and he recognized that fact. One writer suggests that he rather favored those Huguenots who devoted themselves to agriculture, industry, and commerce. "He opened to their enterprise all the French colonies except Canada."³⁹ The Cardinal appreciated their economic importance as individuals, but depreciated their political strength as a body. To preserve the former and ruin the latter was necessary in order to develop France along either political or economic lines. "There is no King, Prince, sovereign, nor any state so well governed that it approves a rebellion of its subjects; for an uprising would be fatal to the existence of the state."⁴⁰ And Richelieu means not only the political but the economic state as well. The Huguenots could not remain either politically or economically independent.

In 1615 Montchrétien's treatise on economics placed great emphasis on the value of the salt industry in France. "I would remark to your majesty," he says, "that all the trade, not only of Frenchmen but of foreigners, depends upon the salt of the Kingdom." Salt can be a great source of revenue for France, he points out, as it is a public necessity for all. In fact the English, Dutch, Italians, etc., should pay the same revenues as the French (which evidently had not been the case previously).⁴¹ In another place, he advocates the transfer of salt to other parts of France by Frenchmen, instead of foreigners, as had been the case.⁴² It would seem that Montchrétien was well aware of the economic importance of the French salt resources. Also, one can see in the above citations another indication of Richelieu's fostering care for the development of French labor and transportation.

It is interesting to note that at the time when Montchrétien was advocating retaliation against foreign countries which injured French commerce, England resented this attitude (as will be shown later), and thus was brought about an industrial monetary crisis in France.⁴³ Hard times helped to bring on the revolt of the Huguenots, who were becoming more and more addicted to the pursuits of trade and industry, and also led to the

³⁹ Rambaud, I, 572.

⁴⁰ *Mercure François*, XIV, 104.

⁴¹ Montchrétien, 235-236.

⁴² *Ibid.*, 185-186.

⁴³ *Ibid.*, 129-130, Editor's note.

uprisings of the nobles who sought to profit by popular discontent, and recover their lost prestige.⁴⁴ Thus a commercial rivalry between England and France, and a political and economic struggle between France and the Huguenots developed into a three-cornered fight, with the English in alliance with the Huguenots, who in turn were aided by many ambitious nobles.

The struggle centered around the capture of the islands of Oléron and Ré, which of course would result in the fall of La Rochelle. Richelieu said, that the island of Oléron was of great importance in that it controlled the outlet of the Clarente and the Sendre rivers, and could be of inconvenience to the traffic of the Garonne river, and thus injure the King's taxes and commerce.⁴⁵ It thus becomes clear that Richelieu had a commercial motive for the conquest of those islands. He desired the advantages obtained from their wines, wheat, and salt.

Of course Richelieu's views were bitterly opposed by the people of La Rochelle. The Huguenots claimed that the French had constantly tried to hinder the commerce of that place, by which it existed. In reply, the King and Richelieu accused the people of La Rochelle of doing injury to the commerce of other towns, as Orleans for example. "They do not keep their promises," the King said.⁴⁶ He told them on another occasion that the commercial growth of La Rochelle made them try to imitate the *Parlement* of Paris and oppose the government. "Now the word is given by their master and it is to be enacted according to his pleasure. Otherwise, it is contrary to the laws of his subjects, the divine law and other rights of the people."⁴⁷ In other words, the commercial as well as the political laws of the central government were to dominate over any province or town. Any special commercial privileges of La Rochelle were subject to the will of this central body.

It is certainly interesting to note that the Huguenots claimed that they revolted to get commercial rights. They bemoaned the unfairness of France in attacking La Rochelle, confiscating its goods, and forcing it to seek English aid. In reply, the royal government has the following to say: "O unfortunate fort so

⁴⁴ Montchrétien, 129-130.

⁴⁵ Richelieu, *Mémoires*, XXIII, 343-344.

⁴⁶ *Mercurie François*, XIV, 94.

⁴⁷ *Ibid.*, XIV, 90-94.

fatal to France, O infidelity, so dearly purchased. Since in your substance is found the force of our misfortune, your ruin will be the true remedy. Who will believe the fact, that they were capable of hazarding the honor of France and the loss of the islands and the fort of Ré, and our liberty thereby.''⁴⁸ It is clear that the French feared above all the conquest of this territory by the English.

At this point it may be observed that the economic basis of Richelieu's desire to put down internal rebellion was probably partly due to this loss of revenue, which must have been largely responsible for the unfortunate financial condition of France.⁴⁹ Furthermore, "the activity of commerce, which renders the Kindom flourishing, would be interrupted, as a result of the Huguenot trouble," says the *Mercure François*.⁵⁰ It is evident that commercial gain and financial loss were the factors behind the opposition to the Huguenot and English control in France.

On the other hand, the Huguenots pointed out the fact that a treaty of peace had been made between England and France with their aid. But they had found little to warrant their carrying out the articles of that treaty. They had been promised free disposition of salt, which they possessed on the islands, and of their other products, yet all the salt on the island of Ré had been taken away from them since the treaty. By the same agreement liberty of commerce was promised, the retention of privileges, and the reestablishment of the island of Ré as a retreat for the naval forces, but none of these had been carried out.⁵¹ In fact the Huguenots were emphatic in their claims that economic injustice caused them to revolt. Later on, in 1627, they asked why commerce was hindered. They hinted that something must be behind it all. A plain exposition of the importance of trade and the production and distribution of salt was given and they declared that England wanted the islands.⁵² The government in reply claimed that the Huguenots had fostered the

⁴⁸ *Mercure François*, XIV, 102.

⁴⁹ d'Avenel, G. de, Richelieu, *Monarchie Absolue*, 4 vols., Paris, 1859, II, 275; *Mercure François*, XIV, 102.

⁵⁰ *Mercure François*, XIV, 102.

⁵¹ *Ibid.*, XIV, 89-90.

⁵² *Ibid.*, XIV, 100-103.

English alliance and that the commercial complaint was a mere false mask, and accused the Huguenots of starting the whole trouble. The central authorities failed to explain, however, why the Huguenots should have so acted.

The personal element was brought into the controversy because there was at least one individual who believed that Richelieu had personal motives in his capture of La Rochelle. "For," says Gaston d'Orleans, the bitter royal opponent of the Cardinal, "by his control of that place he could monopolise the salt sent to England and France as a whole."⁵³ (Evidently the importance of the salt trade as applied to La Rochelle justified the ardent efforts of all parties to retain control of it.) Indeed, Gaston claims that if Richelieu should fortify properly the islands around La Rochelle, he could render France tributary for the salt trade, and possess the principal revenue of the kingdom.

Viewed in retrospect the Huguenot affair was one of the steps in Richelieu's efforts to centralize all the trade of France. His assuming the office of superintendent and grand master of commerce and navigation was another. However, the important deduction from it all is that the British, the French, and the Huguenots all desired the control of the salt supply, which, being near La Rochelle, became the logical economic bone of contention for all parties. As a matter of fact, one finds that in 1629, Richelieu was appointed Lieutenant General of the islands of Ré and Oléron and several other places.⁵⁴ He actually controlled Oléron, and perhaps Gaston was not wholly in the wrong. At least one can be assured that the Cardinal realized the importance of that region, though to what extent he was influenced by patriotic or personal reasons is a question which is difficult to settle. It seems quite clear, however, that the Huguenot affair was not simply a political, but also an economic problem. In the second place, it is evident that Richelieu brought about not only political, but economic centralization in his handling of the Huguenot situation. In keeping with his mercantilistic policy he did not desire either political or economic decentralization within France.

In his efforts to create an efficient and centralized economic

⁵³ *Mercure François*, XVII, 216-218.

⁵⁴ Molé, II, 2.

state Richelieu had certain ideas as to the kind of man he desired for the King's household and other official positions. He desired the positions to be filled from the nobility, yet every individual appointed to office in the King's household should be qualified for his place.⁵⁵ While he believed the class system was best for France, yet even here he considered the interests of the common people. For by limiting these positions to the nobility he would leave more people liable to taxes and in that respect would aid the people. He then openly advised the King to appoint men on the merit system, and not sell the offices. "Thus virtue will be the reward for office, not money."⁵⁶ He even outlined the requirements as to what constitutes a good councillor.⁵⁷ Above all he must be faithful to God and the state. He can attend to his own business and the state's also, but in a conflict of interests, the welfare of the nation comes first.⁵⁸ Indeed, when Richelieu says that a minister must be chosen according to his capacity, and his reward as a faithful public servant is that of fame which is the greatest, he seems like some of our modern idealists with socialistic impulses. In fact "state socialism" seems to be an underlying premise. A happy state, a happy people would make a great King and a magnificent France; this sums up his philosophy.

Fame should not be the only reward of a minister of the King's household. "He should be given enough to live on in comfort and be able to labor for the grandeur and benefit of the kingdom."⁵⁹ If a man has the honesty, ability, and foresight to merit a governmental position of this sort and to work for the welfare of the state, the government should provide for his economic existence. Richelieu has a practical way of examining political matters, which indicates that he saw their economic importance as well as their political or social value.

⁵⁵ Richelieu, *Testament Politique*, I, 207.

⁵⁶ *Ibid.*, I, 208-216.

⁵⁷ *Ibid.*, I, 217-218.

⁵⁸ *Ibid.*, I, 225-226.

⁵⁹ *Ibid.*, 195-196. D'Avenel has pointed out that the officers of the King's household, as *chambellan*, *grand ecuyer*, and *grand maître* of the King, were charged with various domestic duties of the royal house, but had no political functions. Richelieu evidently wanted to make these officials of more political and economic value to the state. See d'Avenel, *Monarchie Absolue*, I, 55.

Good officials were necessary to build up a strong state not only politically, but economically as well. "A person's interest is not to be compared with that of the public welfare." ⁶⁰

It seems that this idea of obtaining men for office by the merit system is entirely in harmony with the mercantilistic conception of the strong state. Richlieu admits this, when he claims that one of the greatest advantages that can be procured for a state, is to give everyone a position suitable to his genius and capacity.⁶¹ A man who is capable of serving the public in certain functions may ruin it in others. What would have been the history of France, if Richelieu had been able to carry out these views? They were conclusions reached as a result of his years of work for the nation, and which he desired to be carried out by those who followed him. Failure to do so, was one of the contributing factors in the events which followed in French history. What a difference it would have made if this advice had been followed. — "Princes must be careful of their given promises. A Prince does harm to appoint a friend to a position for which he is incompetent. A personal friendship should not come before the interests of the state." ⁶²

However, when one examines his administration as a whole, it will be seen that the Cardinal did not carry out his ideas to the letter. He knew that to change a custom takes time. Therefore, in such matters as the sale of offices versus the merit system, he admits at the last that a man must submit to certain weak conditions, and prefer a moderate regulation to a more austere settlement, which would probably not be so successful. "He who brings justice in by the lump, may sell it at retail, but on the other hand, a man who buys an office may conduct it aright, so as not to lose what he put into it." ⁶³ He believed in not rushing into radical changes. He admits that he would be more popular with the common people if he advocated the suppression of the sale of offices. However, he believed that the welfare of the state is best maintained as it is now.⁶⁴ The nation was not strong enough as yet to bring about the required change,

⁶⁰ Richelieu, *Testament Politique*, I, 282.

⁶¹ *Ibid.*, I, 296.

⁶² *Ibid.*, I, 299-301.

⁶³ *Ibid.*, I, 156-158.

⁶⁴ *Ibid.*, I, 163-165.

which could better take place at a later time, while bad effects might result if he abolished it at this time. Evidently he judged all changes on the basis of the present and future welfare of the state. Again he said repeatedly that merit should rule the Prince and his appointments, but admitted that he had not followed out this idea. "The reason for it," he says, "is due to the fact that while disorders were in vogue, without any possibility of a remedy, reason required that order should be extracted out of the troubles. This was my intention in preserving or keeping in offices in my care people whom I could oblige to follow strictly my intentions and plans. If it had been possible during the troubles of a reign agitated by different storms to settle the regulation I propose, I would have been a very religious observer of it."⁶⁵ Richelieu believed that an idea in theory and in practice becomes two different things, which can both exist only if the welfare of the state permits. In the case of the merit system, however, he did hope to see it succeed in the end.

Before he could carry out many of his plans along these lines, he had to restore peace in France. He hoped to do so by means of a large army centralized in the hands of the royal government. "For," he says, "a Prince must be powerful by the strength of his frontiers and the strength of his army. The welfare and the repose of the state depend on the fidelity and repose of its defenders."⁶⁶ The army was another means by which France was to be made ready for the great economic change which would take place when peace arrived. Alas, the great Cardinal had departed before that eventful day occurred.

It is interesting to notice, however, that in spite of the many distractions of war, Richelieu tried to use the centralistic policies of the government to bring about great social improvements. For example, "*lettres patent*" were granted a certain individual who offered to aid in the foundation of an institution for the incurable. "There are," said the edict, "many hospitals and monasteries for curable troubles." Therefore, the government considered such an institution needed for the welfare of its people and allowed its establishment according to fixed rules.

⁶⁵ Richelieu, *Testament Politique*, I, 188-191.

⁶⁶ *Ibid.*, II, 1-3; Isambert, XVI, 386.

It was to be exempt from taxes, and to be favored in all ways by the government.⁶⁷ The letter, published in 1637, shows that the government was interested in and fostered all schemes which could be of benefit to the general public welfare. It even went so far as to investigate the hospitals and their bad administration, which prevented the poor from being received. This evil was to be remedied; the Mayors and Bishops were to look after their interests. The poor were to be aided by new laws; public employment was to be provided. "By not working," Richelieu said, "they deprive the public of the services which it could receive by their labor."⁶⁸ This statement indicates solicitude for the interests of the poor and the state as well, rather surprising but entirely in harmony with the general plan of government. He seemed to be interested also in the physical welfare of the people. The establishment of a Royal Garden at Paris for the culture of medicinal plants, would indicate a general governmental plan to preserve and conserve the health of the people and thus make France strong. For the government knew that the health of man is the most desired and precious of things. "To aid the universities in their research along this line and to help the people in their collection of medical plants, we desire to establish this garden, etc."⁶⁹

All this formed part of the one political, economic, and social conception of Richelieu, namely, to build up a great state along these lines. To reduce the nobles, to put down the political and economic power of the Huguenots, and to unify and make efficient the governmental organization as a whole were elements of one scheme which was essentially centralistic not only on the political, but also on the economic side. He was successful in his efforts to attain this program. Yet his financial policy is generally considered his one great failure. Thus it merits consideration.

⁶⁷ Isambert, XVI, 474-477.

⁶⁸ Richelieu, *Lettres*, II, 180.

⁶⁹ Isambert, XVI, 161-162.

CHAPTER V

RICHELIEU, AND THE FINANCIAL ADMINISTRATION OF FRANCE

The financial phase of Richelieu's administration is a very difficult subject to treat. It has been, in itself, fairly well developed in financial works dealing with the time. But as a part of a general economic scheme, the weak phases of his activities in this line take on a new meaning, and thus require consideration from a new point of view.

In the light of a broader interpretation of the elements entering into the financial administration, it does not seem possible to accept the common conception of this part of the great Cardinal's work. That the weakest phase of Richelieu's ministry was his administration of the finances, is probably true; but considering all conditions involved, one cannot say it was a failure. The accusation that he made no effort to relieve the burdens of the people, or that he failed completely in his efforts to reform the abuses of the financial administration is false.¹ It is an unjust interpretation of the man's career, and necessitates a vindication, although, in one sense, other writers have attended to this more or less successfully.²

Richelieu in developing the financial side of his administration was guided by his one general purpose, namely, to build the great state, of which the financial system was a necessary part. But it could be improved only in times of peace and thus appears the real explanation for what failures there were in the Cardinal's policy, — namely, a long period of war which was likewise a necessity in the preliminary development of the great state. Richelieu realized that he could carry out a general financial reform only in times of peace. He points out in his *Testament Politique* that he ruined the Huguenots, put down the

¹ Lodge, R., *Richelieu*, London, 1896, 174.

² Caillet, 254, etc.

nobles, and undertook a great war against powerful external enemies, in order to assure a good peace and repose for the future.³ Why? He goes on to say that the tolerance of these abuses has prevented any attempts to attain his aims, of which the reform of the finances is one. The Cardinal's main interest during his administration was in carrying out the duties of "superintendent of navigation and commerce, etc." As a result he intrusted the principal care of the finances to the superintendent of finances. Yet he gave attention to financial matters throughout his life, and left, in his *Testament Politique*, a clear and concise solution of the whole problem, to be applied later.

This subject will be treated in two parts, first the achievements and problems of Richelieu and his financial superintendents during his administration, and secondly, the general theoretical solution of the problems as expounded by the Cardinal in his last great work. In considering his achievements or intentions, one must bear constantly in mind the main purpose behind all his ideas, namely the grandeur of the state and the elements entering into the attainment of that ideal.

It was in 1615 that Richelieu first took an active public interest in the finances of the country. He spoke then as a representative of the clergy against the sale of offices, which increased the burden on the poor people, who were not able to bear much more. "Finances," he said, "are the true nerves of the state and should be administered with economy and with the reduction of expenses, such as pensions, etc."⁴ Also he maintained that the number of people who were exempt from paying taxes should be decreased, all in the interest of justice and the welfare of the poor. However, internal dissension prevented any actual accomplishment except the temporary establishment of a chamber of justice to study the question of finances.⁵

Nevertheless, this meeting of the Estates General marks the beginning of the reaction against the heavy taxes and the unfair exemptions of certain classes. The assembly had heard the demands of the third estate for the establishment of a real

³ Richelieu, *Testament Politique*, II, 85.

⁴ Richelieu, *Mémoires*, X, 203, 321-322, 340, 358.

⁵ "This chamber was created in 1624 and revoked in 1625. So little was done," — Isambert, XVI, 147.

taille borne by all owners of "immovable property."⁶ From now on this tax was one of the goals of their ambition.

None appreciated better than Richelieu the immense waste of funds which had been going on since the death of Henry IV. Huge amounts had been spent on pensions for various nobles. Indeed he said, that "the economy of Henry IV and what he has left alone has preserved France. But it will not last, and the very fact that the nobles who have obtained most of the money claim that it was given to foreign statesmen, makes an understanding necessary at once."⁷

Richelieu took two steps in 1625 to remedy the situation. He advocated publicity in the disposition of money obtained in taxes, and a reduction of the expenses of the government.⁸ To carry out the above purposes he brought about a temporary establishment of the chamber of justice,⁹ and the replacement of corrupt officials by honest ones.¹⁰ "A change of officials," he said, "is not a good thing, but there are times when a nation is saved by means of such changes."¹¹ Richelieu carried out this idea by replacing several financial officials who were connected with various instances of corruption.¹² However, nothing was really accomplished except the stirring up of a little excitement among the nobles, until 1626, when the two inefficient individuals by the names of Champigny and Marillac were replaced by the Marquis d'Effiat, in the office of superintendent of finances. "His administration," said one writer, "can be placed beside that of Sully and Colbert in merit and importance."¹³

The position of superintendent of the finances was, next to that of chancellor, the most important. He had charge not only of the finances but also of all of the internal administration. In fact, next to Richelieu, he took precedence. D'Effiat took full advantage of his powers and showed his ability from the very beginning. The first thing he did was to have the assembly

⁶ Richelieu, *Memoirs*, XI, 240-243.

⁷ *Ibid.*, XI, 240-243.

⁸ Richelieu, *Lettres*, II, 177-179.

⁹ See p. 93, note 2.

¹⁰ Molé, I, 337.

¹¹ Richelieu, *Lettres*, II, 25-26.

¹² *Ibid.*, II, 26, 209-211, 330; *Mémoires*, XXII, 354-356.

¹³ Caillet, 268.

of notables called. At this meeting, he presented to the deputies a valuable statement of the financial condition of France. He indicated the lack of funds for everyday expenses. Money had been collected ahead of time¹⁴ and bad management of the finances had been endured ever since the age of Henry IV.¹⁵ Just as Spain had suffered because of heavy war expenditures and no peace, so France was on the verge of ruin because of the state of her treasury. Efforts had been made to aid the finances by selling the domain of the King; by the creation of offices and increase of *taille*, but to no avail. "However, when peace is declared," he said, "the King wants to aid his people, put down the internal disorders, and increase the rights and wages of sovereign companies, etc. This meeting is to offer solutions of the present problem. The King especially desires a decrease of the *tailles* for the benefit of the people, because of their terrible condition. Also, supremacy for France abroad needs good home finances. Expenses and receipts must be made at least to balance."¹⁶ "One of the means," he said, "of bringing this about is to supervise more strictly the amount of money collected and spent."¹⁷ That there was too much chance for "graft" was the keynote of his discourse. He intended to put the finances of France back where they had been in the times of Sully, and the methods used were fundamentally those of the latter.

His remarks indicate the unfortunate financial condition and the problems confronting d'Effiat if he was to improve them. However, the great expenditures brought about by unforeseen external and internal troubles prevented him from accomplishing much, except to keep down the public debt, which was a great work in itself. For example, one way by which he diminished the expenses of the government was by reducing the interest rate on money advanced to the government from 16 or 20 per cent to 10 per cent.¹⁸ Strict economy and increased credit would have worked wonders in spite of the ever-existing disturbances.

¹⁴ *Mercure François*, XII, 804.

¹⁵ *Ibid.*, XII, 790-794.

¹⁶ *Ibid.*, XII, 802-809.

¹⁷ *Ibid.*, XII, 794.

¹⁸ *Ibid.*, XIV, 589-590.

Richelieu also delivered a speech to the assembly of notables, in which he tried to justify the heavy expenditures made so far in his administration. "Everyone knows that in matters of state real results are not often achieved at little expense. The great numbers of soldiers necessary inside and outside of France explain it clearly and so we cannot doubt the necessity. The integrity of the administration guarantees the honesty of the expenditures; and the oppression of the outside powers and internal rebellions threatening the ruin of the Kingdom, explain their need.¹⁹ He tried to point out that the great expenditures were for the welfare and future grandeur of France, and so far as he went he was right. In advocating a state of preparedness in the future for the preservation of France,²⁰ he strikes a chord which is more or less modern. In fact Richelieu here justified his administration, and of course it was for the superintendent of finance to obtain the money in the best way available, even though the people had to suffer as a consequence.

The Cardinal became so infatuated with his external plans of building up a great commerce, a large navy, and making France strong by means of a great army, to be used against her ever-present enemies, that he seemed to have forgotten all his financial schemes for improvements. Of course the death of d'Effiat in 1632, followed by the appointment of two weak superintendents, both theoretically working at the same task, accounts for the weakness of the financial policy to a certain extent. Richelieu realized that in the death of his great financial minister d'Effiat he had suffered an immense loss, and both he and the King were greatly affected by his death.²¹ Yet he should have done better in replacing him. The two men, Bouthilier and Bullion, who divided the duties of this office, were not strong men. This contributed largely to the unfortunate financial condition of France in 1642, which will be taken up later. Furthermore, from 1632 to 1642 was the period in which Richelieu was engaged in the important diplomatic, economic, and military activities of the Thirty Years' War. Expenses, on this account, together with part of the former costs of the large

¹⁹ *Mercuré François*, XII, 756-760.

²⁰ *Ibid.*, XII, 760-761.

²¹ Richelieu, *Lettres*, IV, 337.

marine, were contributing factors toward the unfortunate financial condition of France at his death.

Richelieu constantly harped on the need of great armies which in turn explained why the expenditures were so heavy. At one time he cited the success of the armies in France as an explanation of the bad finances, and promised a future reform. Quoting from the philosophers the saying, "that which is first in intention is the last in execution," he promised reforms in the name of the King, for the people, (1) by the decrease of the *tailles*, (2) by revoking undue exemption privileges, (3) by abolishing luxury and waste, and (4) by the increase of commerce.²² This promise is an excellent example of the clear economic viewpoint of the man. He had a definite economic policy even if conditions were such as to prevent him from carrying it to completion.

He even claimed that he had the interests of the people in mind, while confronted with financial problems involved in raising great armies and navies. From the first, he had tried to raise troops in various provinces in order to protect their commerce and ships, and to secure freedom of the sea for them.²³ One must not be too hasty in condemning the man when one considers the independent ideas of the various classes and individuals in France. How to raise money and also respect individual privileges was certainly a problem. For he knew the time was not ripe to do away with all special exemptions.

In 1630 Richelieu used his own personal funds to pay the army in Italy, the government having failed to send him the required amount. He even went so far as to borrow money for the army from individuals.²⁴ In 1634, he again admitted that war had cost a great deal and was a burden upon the poor, but he affirmed it was a necessity in order to save those men and to build up the nation.²⁵ He tried to aid the people by decreasing the wages of the troops, who were then the best paid in the world.²⁶ Towards the last he was so deeply affected by the financial side of affairs that, in a letter to Bouthilier, he said that the

²² Beaurepaire, Ch. de, *Cahiers des États de Normandie*, 3 vols., Rouen, 1877. III, 205.

²³ Richelieu, *Mémoires*, XXIII, 125.

²⁴ Richelieu, *Lettres*, III, 694.

²⁵ *Mémoires*, XXVIII, 4. *Lettres*, II, 297-298.

²⁶ Richelieu, *Lettres*, IV, 523-525.

latter should decide financial matters, but if they were brought before the King Richelieu would give his opinion.²⁷

By 1638, the finances were in a very bad shape, as is shown by the fact that Richelieu, in a letter to M. de Bullion, complained of the non-payment of the troops. Money was asked for the marine, the army, fortifications, etc.²⁸ In fact, Richelieu had finally realized that he was involved in a death struggle, and had concluded that victory was the only salvation for France regardless of monetary consequences. As late as 1641 he wrote in a letter that the King must provide for a great navy even if he has to borrow the money, for power on the sea is necessary.²⁹ If the Cardinal could have had personal charge of the financial end of things, it might have been different. However, it was a physical impossibility to handle all the affairs at the same time, as an intensive study of the problems involved will prove.³⁰ Yet he did from the very first try to bring about some constructive financial legislation.

Richelieu displayed a certain amount of economic caution and ability when at the beginning of his administration he urged the need of making the best of conditions. "Since God is the only being who will do something for nothing, in order to arrive at his good ends, it is necessary either to diminish the ordinary expenses or increase our receipts or do both. However, it is impossible to retrench in the necessary costs of the state.³¹ To think of such a thing would be a crime. This is why the King prefers the public to his own individual interest, and retrenches on his own household expenses in preference. You can judge the necessity of every other man doing the same thing even when he cuts down on some things involving his own person. Each should aid according to his means, and the small efforts of the poor should have a place with the larger aids of the rich. The most austere rules are and may seem mild, when they have no other end than the public safety and well-being."³² Could anything be more modern than this statement?

²⁷ Richelieu, *Lettres*, IV, 647.

²⁸ *Ibid.*, VI, 245-247.

²⁹ *Ibid.*, VI, 806-807.

³⁰ Beaurepaire, III, 13.

³¹ *Mercure François*, XII, 759-761.

³² The assembly of notables at the beginning of Richelieu's administra-

Richelieu admits that war is necessary for the good of the state. Therefore it is necessary for all to do their "bit" toward meeting the inevitable heavy expenditures. But many for various reasons failed to respond to similar exhortations; and therein lies the failure of his policy. The nobles and the clergy did not fulfil their part of the bargain, though he had a sublime faith in the patriotic feeling of the upper classes of the people. His belief that educated individuals would all work for the public welfare was a great mistake.³³

The Cardinal did all he could to carry out this idea by punishing corrupt officials. "No official who looks after only his individual interests should retain office."³⁴ Yet he was lenient because of the King, who desired his favorites kept in office.³⁵ Again one sees that the faith of the Cardinal in every man's interest in the state, and his conservative attitude toward violent changes in offices caused him to leave inefficient men in various positions, and resulted unsatisfactorily for the nation.

The most interesting phase of Richelieu's efforts to meet the financial situation in 1626, was his attitude toward the common people. He admitted that in wartime the people contributed not only labor but their blood. Therefore, he advocated making the people contribute only enough to keep them from losing the habit of paying taxes, and they were to be heavily taxed only when foreign enterprises or internal rebellion necessitated extraordinary means, for the welfare of the state.³⁶ Thus, Richelieu was entirely consistent in obtaining the money of the people as far as possible in times of emergency. He only carried out what he had said in 1626. His great mistake is to be found of course in his attitude toward the exemption of the privileged classes, which he permitted.

tion had succeeded in bringing into the foreground the need of retrenchment in government expenses, of decreasing the *taille*, and making other financial reforms, and lastly of doing away with corrupt officials. People in France realized that these problems had brought about the ruin of Spain, and they wished to avoid similar disasters, in order to save the state. See *Mercure François*, XII, 774-783.

³³ *Mercure François*, XII, 760, et seq.

³⁴ Richelieu, *Mémoires*, XXII, 256.

³⁵ *Ibid.*, XXII, 345-348, 357.

³⁶ Richelieu, *Lettres*, II, 302-303.

In 1630, a special council for the consideration of the finances was formed. The superintendent of course was the head of it, and its reports were usually accepted by the council of state. This change was accomplished through the Cardinal's efforts and indicates his interest in that department. The council, however, not only had charge of the finances but also of matters dealing with the roads, bridges, and other public works. It is interesting to note that Richelieu tried to appoint nobles to positions in the various councils and thus interest them in affairs of state.³⁷

But the most interesting and important improvement in the matter of finances, was the development between 1633 and 1637 of the system of Intendants of justice, police, and finances, which was one of the most important accomplishments of Richelieu, because it took away from *Parlement*, the nobles, local governments, etc., all rights to a monopoly of the collection of governmental taxes.³⁸ The Intendants carried out the decrees and reported to the central governmental councils, and had supervision of all affairs which concerned the taxes and administration of public funds. The main purpose in appointing them was to centralize the administration of finances, in accordance with Richelieu's general plan of centralization. Their appointment aided the people, who in many cases suffered from corrupt local governors and nobles charged with the collection of taxes.³⁹ It was the special duty of the Intendant to look after the interests of the common people. Generally speaking, they were established in order to bring about local unity in all parts of the administration, namely, the police, justice, and finances, and to see that these were controlled by the central government. Yet Richelieu permitted the Intendants in the performance of their duties, to make certain allowances for the franchises and local liberties of provinces or cities. He did this in order that they should build up commercial industry.⁴⁰ The Cardinal desired the supremacy in a political sense of France, but he was willing to grant political or economic privileges to those who would use them for the interest of France, by developing their commercial

³⁷ Caillet, 23.

³⁸ Isambert, XVI, 442-450; Caillet, 45-54.

³⁹ In 1626, careful instructions were laid on the "tax commissioners to avoid corruption." — Isambert, XVI, 165-174.

⁴⁰ Montchrétien, XCI.

or industrial resources. Exceptions were valid only when they resulted in increased grandeur for the entire state. In many cases the Intendant really usurped the despotic position of the noble and thus the people did not gain by the change.

Richelieu was conservative in his plans for specific financial reform in that he advocated no general retrenchments on the ground that they would not pay for the reason that the expense of bringing them about would make them failures. For example, he did not put much faith in the selling of so-called "bonds," because the King never received more than a third of their amount, while much time was consumed in examining the securities upon which they were based.⁴¹

He did favor greater returns by means of increased commerce and a strong marine. "By means of both," he said, "France could make herself more powerful in money than any King of the Christian world." One of the most important ways by which the taxes were to be increased was by means of the *gabelle* on salt, which both the French and foreigners obtained near La Rochelle. No wonder he was so interested in obtaining control of that city.⁴² All the provinces of France were to pay this *gabelle*, and any parts exempt before should have their privileges transferred to the collection of the *tailles*. This was not a good tax because it worked a hardship on the common people.

Richelieu also showed a lack of insight in the collection of revenue, namely, in the matter of commerce. Trade was to be stimulated in order to obtain more money for France.⁴³ The French were to pay slight duties on the export of goods, but a limited number of imports paid duties, light at first but heavy later on. Thus, "while Richelieu obtained more money for taxes, he did not see as Colbert did, that by decreasing the duties instead of increasing them, he would increase the receipts because of the growth of commerce."⁴⁴

⁴¹ Richelieu, *Mémoires*, XXIII, 264. Bonds were sold during the age of Richelieu, with the *tailles*, the *aides*, *gabelles*, and other taxes as security. Very often it was difficult to find out whether a certain tax could be accounted good security, since it might have been spent in advance.

⁴² *Ibid.*, XXIII, 262.

⁴³ Isambert, XVI, 514-515.

⁴⁴ Deschamps, 138.

Many examples can be found wherein the Cardinal tried to settle conflicts between local provinces and the central government over questions of finance in the interest of both and for the state as a whole.⁴⁵ One can obtain a general idea of his fundamental desire in his statement of the financial side of the case to the Province of Brittany. In 1628, he admitted that the wars against the Huguenots, etc., had been costly, but they conserved the state and prevented the English from invading Brittany. To protect them a strong army and navy was necessary and strong forts along the coasts. Thus for their own interest as a part of the state, he asked them for money.⁴⁶ But the misery and poverty of the people even at that time was a strong obstacle to extensive gifts of money to the government. The fact that Richelieu had to go many times to the local *Parlements* of the various provinces for money indicates wherefore the terrible financial condition of the poor was bound to come, and it is surprising that it was not worse.

Of course Richelieu came in for his share of personal criticism. Gaston, brother of the king, glad of a chance to injure the Cardinal, accused him of causing this poverty through his personal ambitions and lavish expenditures.⁴⁷ In reply, Richelieu frankly admitted that he desired to aggrandize France, but as a good servant he regretted to see the Kingdom afflicted with these passing misfortunes, which would continue if men like Gaston were to have their way.⁴⁸

There was one way in which the central government as a whole took a definite stand. It was in suppressing the corruption of the tax collectors. In 1631, one year before d'Effiat died, it was decided that "no impositions should be raised except in virtue of *letters patent* sent and sealed in regular form, which should be registered by the controller-general of finances. Furthermore, the royal judges were ordered to consult the people on Sundays or Festival days to make clear the causes of the impositions which were proposed, naming the amount of taxes, and obtaining the consent of the majority of the people, etc."⁴⁹

⁴⁵ *Mercure François*, XIII, 533-534; XIV, 113-119.

⁴⁶ *Ibid.*, XIV, 139-140.

⁴⁷ *Ibid.*, XVII, 255-256.

⁴⁸ *Ibid.*, XVII, 301.

⁴⁹ *Ibid.*, XVII, 337-345.

The finances were to be administered according to the amount called for. Officials were to obey the laws, there was to be an absence of "graft" in that they had to report the amount to be collected to the people and get their consent, and also, send in a report concerning the sums obtained to the central government. Local and external conditions prevented this plan from being actually carried out, but it is significant in that it aimed to place the collection of the finances on a more democratic basis than ever before. The fact that the people were to be consulted gives to them an economic and political importance strangely out of place in a true conception of an absolute centralized monarchy, unless one considers the mercantilistic point of view, that they were a part of the state, and thus their interests would tend to influence the strength or weakness of the nation.

In 1634, in an effort to aid the people, the *taille* was cut down by one fourth and they were exempted from the ordinary increase of the burdens for the year 1634. Also, the increased payment made by the people in the past was largely due to the "graft" of the tax collectors. To avoid this, officials were to go into parishes and districts, examine the rolls of the *tailles* of those exempted, and see that each one should bear his just portion, according to his ability or means, etc.⁵⁰ This practice would indicate a continued effort to improve the financial condition of France, even at that critical time.

The same edict went on not only to deprive the rich of their "increasing rights" and exemptions, but also, only the hereditary nobles were to retain their privileges. All those ennobled in the last twenty years except twelve associates of the company of New France (notice the indirect importance placed upon colonization by this act) were to lose their privileges. In the future nobles were to be created only for important considerations, etc. Also, no one could be exempt from the *taille* by the simple consent of the inhabitants of the parish, but all were to pay their regular share.⁵¹ None but exemptions of long standing were to be recognized.⁵² This would seem to be a very important

⁵⁰ Isambert, XVI, 389-391; *Mercurie François*, XX, 661-662, 697.

⁵¹ *Ibid.*, XVI, 391-406; Beaurepaire, III, 207-212.

⁵² Omer Talon, *Memoires*, Petitot 2^e Serie vols., LX-LXIII, Paris, 1819-1829, LX, 60-63; 84, 123.

edict, even though as one writer says, "It was not well observed."⁵³ It illustrates the efforts of the government to aid France and its people in obtaining a more just and fair basis for taxation. Even though the edict failed, it is evidence of the efforts of Richelieu to reform the finances in a constructive way, at that critical epoch of French history.

In 1635, another edict was issued to supplement that of 1634. It appears that many rich people had fled to other towns to avoid paying taxes, thus making the burden heavier for the poor. Similar action was to be prevented in the future, by making them liable to taxation in their old home, until they had been three months in the new one.⁵⁴ There was indeed a strong tendency on the part of the government to aid the poor, in fact it even went so far in an edict abolishing the *sou* for the registration of deaths, marriages, or births, as to say that "the strong should bear the burdens of the weak."⁵⁵

By 1637, the financial condition of France had become critical. Richelieu, in a letter to the King, warned him against overtaxing the border cities, since their security was necessary for that of the state.⁵⁶ In 1639, Richelieu on account of the increasing expenses had to cut down the financial aid given Holland.⁵⁷ Finally the Cardinal in a letter of 1639 came out directly against the increase of the *gabelle*, against unfair taxation in general, and corruption, as having caused the financial troubles of France. "I know," he says, "that the superintendents will say that they can do nothing, and are obliged to undertake many things which they would condemn another time. I will say that all have given their hearts and lands to the enemy and are condemned at all times."⁵⁸ Richelieu, by this letter and others, opposed the policy of the superintendent and the financial council, which caused so much suffering.⁵⁹ Yet he added insult to injury by asking for additional money. In fact, the last letters of Richelieu to the superintendent of finances not only requested

⁵³ Caillet, 265.

⁵⁴ Isambert, XVI, 455-457.

⁵⁵ *Ibid.*, XVI, 460-461.

⁵⁶ Richelieu, *Lettres*, VI, 98; *Mémoires* XXX, 317-318.

⁵⁷ *Ibid.*, VI, 613-614.

⁵⁸ *Ibid.*, VI, 496-497; 500-501. Isambert, XVI, 497-499.

⁵⁹ *Ibid.*, VI, 858-859.

more money, which was needed, but also recommended the passage of a general aid of a "*sou per livre*," which he said the people were willing to endure.⁶⁰ He had come to the point where he realized that the people had something to say. He admitted that they were, after all, the deciding factor in the solution of this problem. "The consent of the people in a time like this," he says, "is better than all the force which one can use in any other way."⁶¹ Finances must have been in a critical state.

It was not an entire lack of ability which caused Richelieu to permit the state of the finances which existed at his death. The whole truth of the matter is that he left the financial side of his administration to his capable minister d'Effiat, who died while in the midst of carrying France through very successfully. Then two incapable men took charge of affairs, and Richelieu was just beginning to take an active hand in financial matters, when his own early death prevented the completion of his plan.

A few things may be noticed in his favor. The debt which in 1595 was 300 millions of *livres* had been reduced to 250 millions by Sully, and was only 300 millions at Richelieu's death. Thus, although the Cardinal increased the burdens for his generation by his wars, the coming generation would have had an excellent chance to develop France on the financial side according to the ideas left in his last great work.⁶²

Finally, when one considers the new and powerful impulse he gave to maritime and commercial enterprises, and his efforts to favor general prosperity and future welfare, it cannot be said that his own personal financial policy was a failure. In the larger sense of the term it was not. That it was incomplete cannot be denied. Constant references by himself and others, leave no doubt as to his future plans.⁶³ These as appearing in his *Testament Politique* will be considered next, and will be seen largely to justify his financial administration.

⁶⁰ Richelieu, *Lettres*, VI, 900-901.

⁶¹ *Ibid.*, VI, 901-902.

⁶² Another evidence of the Cardinal's interest in the finances is found in the budget system which he attempted to introduce. This innovation required a yearly statement of the finances, and would have been very valuable if it had been carried out.

⁶³ Beaurepaire, II, 175, 176, 177; 188-189, etc.; III, 1-3, 69. Goulas, N., *Mémoires*, 2 vols., Paris, 1879, I, 19-20.

Richelieu has left in his *Testament Politique*, a complete statement of his final ideas with reference to the solution of the financial problems confronting France.⁶⁴ That he expected the future generation to carry them out cannot be doubted. Indeed, it is to his credit that in his financial schemes as well as his entire policy, he looked into the future as well as the present. Admitting that the expenses for war were great, he maintained that the conflicts would benefit posterity forever and repay them for the pain and labor undergone.

The graft and corruption connected with the collection of taxes in the past, had filled him with disgust. He had been in favor of sending officials to oversee these collectors and also the nobility, and prevent any oppression of the weak and poor by the strong and rich. However, he shows his caution and farsightedness by indicating the necessity of "going slow" and not overturning the entire system of collection. "The state should see," he said, "that those who serve the nation to the best of their ability should be properly rewarded." To punish the really bad, and reward the faithful, was the true method of his reform. In fact his entire plan for the reform of the financial officials was placed on the solid principles of allowing fewer men to do the work and rewarding them adequately for their efforts. Centralization in the hands of a few men of merit expressed the idea of one who was always looking for the greatest economic, political, and social returns, for every measure along these lines.

One must turn to the second part of Richelieu's *Testament Politique* to appreciate his final ideas concerning the finances of France, and his plans for the future solution of the difficulties arising there. "It shows that he was not a stranger to this important part of his administration," says one writer.⁶⁵

In the first place Richelieu makes clear the power of money in developing the power of the state. "Finances," he says, "are the nerves of the state." In order that a nation may be able to compete with other countries, she must have the financial foundation upon which to build her power. He points out that the

⁶⁴ The basis of this discussion is Richelieu's treatment of the finances in his *Testament Politique*, French Edition, II, 80-105. English Edition, II, 105-132. Both II, Ch. IX, Section VII.

⁶⁵ Caillet, 260.

foundation must be solid. There is a danger of asking too much of the people, and also of asking too little. A happy medium must be struck. All necessary expenses must be met. However, the less one gets from the people the better. Now to obtain the happy result of the best welfare of the people, strict economy in the use of money must be the motto of the government, which, of course, means a reform in the means of collection of the finances and also in the payment of expenses. He maintains that the financial accounts of France, both receipts and expenses, must be open and above board. "Secrecy is conducive to corruption," he says.

He defends his policy of the suppression of the Huguenots and his attitude toward wars in general on the ground of their necessity in order to obtain a peace which would do away with all other abuses. The finances could not be reformed very much until an internal and external peace should be secured.

He then takes up the matter of internal revenue taxes, as a means of raising revenue. He admits that they bring money, but also realizes that they raise prices, which in turn makes the expense of maintaining soldiers higher, as well as causes worse conditions for workmen. They result in a great loss to individuals, with only a slight gain for the Prince. "The poor landowner will not gain by the levy of such a tax. His land will remain the same in value and its products likewise, and even if they increase in price, the excess of price will cause the market for the products to be limited." Richelieu seems to have a faint conception of a law of supply and demand as affected by price. He goes on to state that there will be not only an increase of revenue tax for the producer, but he will also have to pay more for other goods. Thus he will tend to become self-sufficing as far as possible. Increasing internal revenue taxes raises the price of commodities and decreases their sale. Certainly this is a remarkable economic idea to come from a "Political Statesman" of the 17th century. He even goes so far as to say definitely, that if the taxes are increased, the loss in foreign trade will more than offset the gain. Also, if the internal revenue taxes are increased it will reduce a number of subjects to idleness, and the amount realized will decrease, due to diminished production.

The discourse of the Cardinal is interesting in that it shows

that he was judging his actions on an economic basis. He admits that he deviates from the subject when he undertakes to point out the bad features of the above tax. Yet this deviation is sure evidence that he was of an economic turn of mind, and that most of his activities, whether political, religious, or social, had an element of the economic in them.

Going back to the matter of taxes, he makes the point that there should be an arithmetical proportion between taxes and the necessities of the state. He goes on to explain by saying that no more must be imposed on the people in taxes than is necessary for the subsistence of the Kingdom in its grandeur and glory. Nevertheless, he points out that the King is responsible only to God in his judgment as to the amount of taxes. Yet he must consider the interests of his people in that their love and fidelity are necessary for the subsistence of the state and the preservation of his person. Even though the King was theoretically responsible only to God, yet practically, Richelieu admits here and in many other places that the interests of the people must be considered. "Taxes," he says, "must be in proportion to the wealth of the country, for if this rule is not followed, his subjects will have no funds with which to pay the regular duties which they owe their ruler, or to build up commerce." A reasonable decrease of taxes, especially the *taille*, and a careful use of the money obtained so as to attain the greatest results is advice worthy of a first-class financier. He says also that the interests which look to the future must be even more considered than those of the present, in spite of the arguments of numerous men to the contrary. These statesmanlike words justify to a large extent the administration of Richelieu.

The views of the Cardinal were not so wise with regard to foreign commerce, on the side of imports. He still believed that the principal riches of the country depended upon the ability to sell much and buy little. He forgot that a balance of trade as a whole was the most sure way of stopping all the attempts at home in the direction of production and industry.⁶⁶ However, that he did see the value of buying commodities in return to a certain extent, will be shown later.⁶⁷

⁶⁶ Caillet, 261.

⁶⁷ See Chapter IX, 134.

The Cardinal emphasized the economical use of the money obtained by taxation. He compared the waste of French money with the use of the taxes in Venice. As a promoter of state economy, he advised the removal of the corrupt "*comptons*," to whom the taxes were farmed. This would mean a money saving of a million *livres*. He concludes this particular topic by pointing out that it was an art to be able to know how to collect only the necessary amount and also how to spend just the amount needed. "The inability to do either, is a detriment and injury to the state." It is clear that Richelieu comprehended the importance of these two sides of the financial problem, and that he proceeded to treat it in a practical as well as theoretical way is shown by what follows.

In taking up the method of reforming the finances, he considers first the amount of revenue, then the expense of the government, and lastly, to what degree the people may be eased by changes in the above two phases. No part of the work better illustrates the clear, methodical, logical working of this great statesman's mind.

In the first place, in his detailed analysis of the revenues and expenses of the Kingdom, he points out that the amounts and methods of taxation and expenses in times of war and peace were different. Also he says that the revenues could be 79 millions and the expenses 44 millions of *livres*. Thus over 30 millions could be saved. In this 79 millions the *tailles* amounted to 44 millions, the aids 4 millions, the *gabelles* 19 millions, and other taxes 12 millions. The expenses are interest on bonds, wages, taxes and rights of offices, etc. To increase the taxes, Richelieu wished to raise the salt tax and make everyone pay it. He also wanted the *sou per livre* tax on commodities in France. Likewise, he desired to diminish the *taille* by one fourth. But he strongly recommended the *sou per livre* tax as an aid to the support of the war for the grandeur of the state, although at heart he did not think much of the tax. He goes on to list the expenses that are absolutely necessary, i. e., buildings and fortifications must be built, and as for pensions, while they cannot be abolished, a happy medium ought to be struck, in that they should be reduced about one half. "Pensions," he claimed, "were for those who

were doing something for the state, like serving in the war for example." Now by cutting down the expenses, the *taille* could be decreased, and thus the people would be aided. "This reduction should be the chief end. For the true way to enrich the state is to aid the people and discharge them of their burdens. However, in doing so, we should constantly have in mind the future as well as the present."

Richelieu had resolved also to put an end to the great amount of interest which was paid on bonds, and at the same time to diminish the taxes on the people.⁶⁸ He planned to do this by a reduction of the *tailles* to about 22 millions; by a considerable increase of the revenue from salt. (This scheme is especially interesting considering the value he put on this product in 1627 when attacking the Huguenots.) Also, by a suppression of the 30 millions above 44 millions. He furthermore intended to make the salt *gabelle* the important tax and one of the valuable resources of the state, by making the trade in that commodity free to everybody. Thus they would get rid of the numerous officials whose wages absorbed a large share of the money received.

The 30 millions of interest charges, which he desired to eliminate, he planned to reimburse within 7 years. He was well aware of the decrease in the value of the capital which the interest represented and saw the advantage to the government of repurchasing the debt while its value was low. "Then," he says, "the revenues ought to be 57 millions of which the *tailles* furnish 22 millions, aids 4 millions, *gabelles* 19 millions, and all the other forms 12 millions. Laying aside the 17 millions to be put in the exchequer, the balance must be looked upon as considerable. No nation lays up half so much after paying expenses."

He notes that many more individuals are to be made liable to the *tailles*, which will aid the people. The reduction of the number of officials will ease them, in that they will become soldiers, merchants, or laborers. Decrease of the exemptions will discharge the people of more than one half of their *tailles*, it being certain that the richest, who are liable to the greatest taxes, are those who get exempted by means of money. In other words, a general reform of the exemptions and the number of corrupt officials would result in more paying the *tailles* and the burden of the lower classes would be lightened.

⁶⁸ Caillet, 262.

Upon what foundation was this entire financial scheme laid? The benefit of the state, and of the people as the strongest factor in the state. "I am sensible," he says, "that it will be urged that it is easy to make such projects, like unto those of Plato's Commonwealth, which though fine in its ideas, is a real chimera. But I dare to affirm that the design is not only so reasonable, but so easy to execute, that if God pleases to grant your majesty a speedy peace and preserve you for the Kingdom, together with your servants, of which I esteem myself one of the meanest, instead of leaving this advice by my *Testament*, I hope to accomplish it myself."

He had indeed an excellent scheme for the financial reform of France. It certainly was a misfortune for the French nation, that he did not live long enough to carry the project to a successful completion. Even though his actual financial administration was somewhat weak, nevertheless this final plan when viewed in connection with his general economic and political policy, justifies, in great measure, his financial policy. The same statement might well be made of his internal administration as a whole.

CHAPTER VI

THE ECONOMIC RELATION OF RICHELIEU TO AGRICULTURE, INDUSTRY, AND INTERNAL COMMERCE

When Richelieu received the office of "grand master and chief of commerce and navigation," it was natural that he should be more interested in the external side of the national development. He placed internal affairs in the hands of others. For example, he left the guidance of industry to the secretary of state, Sublet des Noyers, *ordonnateur générale* of the buildings and manufactures of the King.¹ So we see that, although the Cardinal entirely neglected no phase of the administration, yet he did not emphasize this particular aspect of it.

From another point of view, it is clear that this part of the French development would have to wait while Richelieu accomplished great things on the exterior. Only matters of direct importance, in that for example they were concerned with the wars, engaged his attention. To illustrate, the Cardinal constantly tried to curb waste and extravagance in the kingdom. He realized that industry and production in general should be made to aid the nation in carrying its wars to a successful completion.² Therefore he asked the *Grand Maréchal*, de Bassompierre, to form a committee to investigate and seek ways to do away with the needless waste and luxuries of the people of France.³ Furthermore, abundance was to be produced in the Kingdom by increased commerce, and the vagabonds, disbanded soldiers, etc., were to be made to work.⁴ Thus the Cardinal seems to have attempted a rather efficient conservation scheme,⁴ which he carried almost to economic extremes when he advocated trade schools as being far more important to France

¹ Pigeonneau, II, 389-390.

² Richelieu, *Lettres*, I, LXXXV-LXXXVI.

³ Bassompierre, *Maréchal de Mémoires*, 4 vols. Paris, 1875; III, 435.

⁴ *Mercur* François, XX, 704-711; XXIV, 1-2.

than the schools of Liberal Arts.⁵ The economic efficiency of the man would be of great benefit to France at the present time.

In the larger sense of the term Richelieu did not fail entirely with regard to internal affairs. "He had too great a desire for the welfare of the public to fail utterly in attempting to continue the internal administration of Henry IV."⁶ He followed the same unconscious economic policy with reference to the internal as to the external affairs; namely, the mercantilistic or the great state idea. He desired to centralize industry and commerce, and take away the powers of local nobles over agriculture. Whatever he did was done for the good of France. However, the many local franchises, the heavy wars, etc., all prevented him from accomplishing very much in such matters as agriculture and industry. These phases of his administration were postponed until the future peace, when they were to be settled in the interest of the public welfare. Nevertheless, he did manage to accomplish a little.

With regard to agriculture, the administration of the Cardinal shows a weakness which was, however, but natural when one considers the torn-up condition of the country at this time. Yet efforts were made to drain marshes, and various companies were granted the privilege of doing this work with suitable exemptions.⁷ Weakening the power of the nobles and centralizing control in the hands of the government was bound to aid the farmers and give them a better chance to pursue their life's work. "Also," says one writer, "the numerous ordinances which were made relating to the problem of raising and allotting the *taille*, and the matter of the discipline of the soldiers, not only resulted in decreasing the bad finances and developing the army, but also relieved many of the country estates by repressing the selfishness of collectors and the ravages of men of war."⁸ All this would have had an important effect on France under different circumstances.

M. Henri Doniol in his *Histoire des classes rurales en France*, has brought up the point that Richelieu's administration, contrary to general belief, did consider the interests of individ-

⁵ Richelieu, *Testament Politique*, I, 125-134.

⁶ Gouraud, I, 189.

⁷ Isambert, XVI, 500-503, 537.

⁸ Caillet, 281.

uals and their freedom and rights. He has cited several extracts from the famous code Michaud of 1629 in support of this point.⁹ In the first place, the farmer was relieved from the *entail*. Also, by the destruction of the fortresses of the lords, an additional security was obtained which did much to relieve the hard life of the population.¹⁰ The prospect of peace produced an incentive to work, because of sure profits. Furthermore, laws relating to exportation and importation, involving the decrease of the *taille*, and efforts to make imports more nearly equal to exports, together with the reduction of the rate of interest, all tended to better the condition of the farmers.¹¹

There are several other measures in the "*grand ordonnance*" of January, 1629, which indicate the solicitude of the government for the people. Article 206 forbids lords to subject their tenants and inhabitants to *corvées* in their own interest, or to impose on the villages in any way. Article 207 forbids lords to make their tenants patronize their mills or presses on penalty of losing their mills and all other rights. Article 209 forbids the lords to interfere with the collection of taxes and the appointment of collectors.¹² ~~A direct effort was made to deprive the lords of any unlawful control over the peasants, and to permit the latter to make the most of their own few privileges. Of course conditions in France were such that this code was never actually carried out.~~

But one can see that although very little was done to aid agriculture, yet in an indirect way a path was prepared whereby this part of the economic development of France was to be controlled and influenced by the central power. The farmers at the start were given more individual rights, and what Richelieu would have accomplished if he had lived is of course a matter of conjecture.¹³

Turning to the subject of industry, one can find more evidence

⁹ Caillet, 281-282.

¹⁰ Code Michaud, see Isambert, XVI, 225.

¹¹ Caillet, 282; *Mercure François*, XX, 697.

¹² Isambert, XVI, 225 et seq.; Caillet, 282.

¹³ Richelieu diminished the power of the Huguenots and nobles as well and after he had put them in their proper position of subordination to the central authority, he did all he could to encourage commerce. See Rambaud, A., *Histoire de la Civilisation Française*, 2 vols., Paris, 1903, I, 572.

of activity along that line of French development, so far as the government was concerned. Starting with the Estates-General of 1615, efforts were made to open industry to all. "At that time, the *cahiers* of the third estate had demanded that the free exercise of the trades be open to all the poor subjects of the King."¹⁴ Richelieu, however, did not respond to the desire to deprive the so-called corporations of their monopolies. The only exception he made was in the case of colonists who had been in the colonies six years. They could become "masters" when they returned to France. This part of his economic policy was weak.

Many industries were at that time the object of regulations. For instance, the beer industry was under governmental control, and the wine growers and distillers were recognized as engaged in two separate industries. Certain regulations were passed also with respect to the iron industry. The soft and hard varieties of iron were designated to be used for different purposes, and steps were to be taken to develop the mines of France.¹⁵ Such an industry as the manufacture of glass in Picardy received its first impetus under Richelieu.¹⁶

The manufacture of rugs and tapestry attracted more of the attention of the government. During the administration of Richelieu a man by the name of Pierre du Pont and a partner were given the right to weave and manufacture rugs in gold, silver, silk, etc., for 18 years. They were to accept apprentices, train them, and as a reward for their services were to be ennobled.¹⁷ In other words, the government made special efforts to develop this industry and thus cut down the imports from the East.

The manufacture of silk, an eastern product, was also fostered by Richelieu as well as Henry IV. It increased to a remarkable extent under the former, who realized its importance. Indeed, he believed in making France able to manufacture such things for herself and advocated the development of the cloth industry in pursuit of this policy.¹⁸ The obtaining of luxuries from

¹⁴ Caillet, 275-276.

¹⁵ Isambert, XVI, 183, 191.

¹⁶ *Ibid.*, XVI, 198.

¹⁷ Caillet, 278.

¹⁸ Richelieu, *Testament Politique*, II, 67-68.

abroad was not to be encouraged; they should be made at home.¹⁹ This belief was a part of the mercantilistic doctrine. "If industry was developed and foreign importations hindered by intelligent laws, France could live on its own manufactures as well as agriculture," said Richelieu.²⁰

One means by which the Cardinal hoped to aid industry was the development of technical schools along industrial lines.²¹ This was a plan which he was not able to carry out before he died.

It is clear that the interest taken by the government in the development of industry was from the point of view of the welfare of the state as a whole. The state fostered those industries which would compete with foreign manufactures, especially in the East. What little attention industry did receive was on the basis of making France a strong mercantilistic state. The destruction of internal political obstacles had an indirect influence on industry in France. Doubtless this field of Richelieu's administration would have received marked attention after the Cardinal had finished the external part of his program and peace had enabled him to turn his attention to other things. This statement might be applied to the matter of internal commerce as well as industry or agriculture.²²

"At the beginning of the 17th Century," says one writer, two obstacles opposed the development of interior commerce: (1) the lack of good roads and navigable rivers, (2) legislation which laid heavy duties upon the products of the soil."²³ The first problem was mentioned by the Cardinal in a letter to his superintendent of finances in 1638, in which he brought out the inconvenience suffered by the public, because of the corruption and waste of money on the part of those who were supposed to attend to the paving of the streets of cities like Paris, which were neglected as a consequence.²⁴ At another time he mentions the plan of joining the ocean and the Mediterranean Sea by means

¹⁹ Beaurepaire, III, 270-277. Indicates the rivalry between France and England in the cloth trade in 1639.

²⁰ Richelieu, *Testament Politique*, I, 64-80.

²¹ *Ibid.*, I, 126-127.

²² Gouraud, I, 190.

²³ Caillet, 284.

²⁴ Richelieu, *Lettres*, VI, 247.

of the rivers d'Ouche and d'Armacon. "But," he says, "this enterprise was too costly for the times. No person would furnish the money, so it was neglected."²⁵ He admitted that such schemes must rely on individual efforts as the government was not financially able to carry them out. However, in 1632 a law was passed with the purpose of making the rivers of Vettes, Chartres, Dreux and d'Etampes, etc., navigable.²⁶ So that evidently Richelieu's interest in this part of his administration obtained some results.

Richelieu tried to carry on the work of Henry IV in developing navigation by means of canals. The famous canal of Braire, begun in 1604, was finished in 1640. The government had tried to pay all the expenses involved in its construction but finally had had to call in the aid of certain individuals to complete the task in return for certain concessions. They were to unite the ocean and the sea by this canal in 4 years or lose the rights connected with it.²⁷ The owners were to be ennobled and might induce other persons of quality, such as churchmen, nobles, and judges, to contribute toward the undertaking. In return, "considering the services which said Guyon and partner render to the public, if they succeed in an enterprise so useful to Paris and many provinces of the Kingdom we will give to them the title of nobility, etc."²⁸ In this case the government wished to centralize everything in its hands, but lacking money, permitted private parties to undertake some portions of the work. However, this concession was made with the welfare of the entire state constantly in mind. The economic benefits of canals were evident to all at that time.

Many other attempts were made to develop other canals, but the unfortunate state of the treasury and general political conditions prevented their execution. "However," says one writer, "the system adopted by Richelieu had at least the advantage of not engaging the financial responsibilities of the state, and leaving to the companies who undertook the task, the costs as

²⁵ Richelieu, *Mémoires*, II, 321.

²⁶ Isambert, XVI, 369.

²⁷ Richelieu took a personal interest in the plan for the uniting of the two seas by a canal. See Caillet, 285; also *Mercuré François*, XXIII, 338, etc.

²⁸ Isambert, XVI, 488-496.

well as the benefits."²⁹ In this one respect, Richelieu seems a little in advance of the mercantilistic belief.

With regard to the condition of the roads and bridges during the period of Richelieu's rule, one writer has taken great pains to prove that the Cardinal centralized their control in the hands of the Intendants. Richelieu made out the budget of bridges and roads, looked over the changes ordered, regulated the *corvées* instead of leaving their control to officials, and was responsible only to the King and his council.³⁰ This unity of oversight was not long in bearing fruit. Although the roads were far from being as well kept as they were in the 18th century, they passed in the second part of the 17th century for the best and the safest highways in Europe.³¹

The service of transportation tended more and more, like the control of bridges and roads, to be monopolized in the hands of the state. Before Richelieu's time, the convents, the universities, the Kings, etc., all had their separate postal and parcel post systems. No royal relays or messengers took private business, unless permitted to do so by the chiefs in charge. The transport of goods in wagons was the exception, merchandise being carried as far as possible on the backs of animals and by boat.

Richelieu wanted the government to take charge of this part of French affairs, and to centralize the postal service in its own hands. He continued this development (which had been started by Charles IX) by creating in 1624, the office of director and "*Intendant Générale*" of the posts, and gave it to one of his devoted servants.³² Also, at this time the royal relays were given the monopoly over the roads they covered. The messengers of the universities were limited to university letters, parcels, etc. In 1625 an edict was issued which established relays on various roads, that is, the government was to rent horses to individuals who were to convoy goods to various places. An effort was made to render the distribution of goods even and fair by preventing the holding back of food, through storing it in boats which were kept in secret places, etc. Warning was given that merchants in the future could not hold up laden boats or keep

²⁹ Pigeonneau, II, 391-392.

³⁰ *Ibid.*, II, 392-393.

³¹ *Ibid.*, II, 394.

³² Levasseur, I, 249.

merchandise in warehouses along the rivers for future use. Such action was fraudulent and to the prejudice of the public.³³ Thus efforts were made to prevent speculation in food and merchandise, in a manner very similar to the present. One sees that the government of that time did not fail to regulate any industry or organization if it saw fit, when the latter tried to interfere with the public welfare. Finally, all goods except grains, wines, etc., were to be transported by royal carriers, so that the form of a monopoly was at last reached.³⁴ However, this privilege of government monopoly of the post and express was never enforced, and the traders remained free to choose their carriers for packages weighing more than 50 pounds.³⁵

Richelieu finally was able to establish regular routes from various cities on certain days, and in 1630, France was divided into 20 postal districts, and 7 foreign offices were added, in Spain, Flanders, England, Holland, Germany, Switzerland, and Italy.³⁶ Carriers left the "central bureaus" of Paris, twice a week, and traveled at the rate of 4 leagues per hour in summer and $1\frac{1}{2}$ per hour in winter.³⁷ The government did not make any profit from the postal system. It was farmed out to individuals and they received the profits.³⁸ Yet there was a gain in that the letters went from one part of the country to another with regularity, quickness, and security unknown in preceding centuries. The creation of relays at this time was a great aid to increasing the speed of the trips. "Indeed," says one writer, "travel by coaches became more regular, and transportation as a whole became cheaper both on land and water."³⁹ Evidently during the administration of Richelieu transportation received an important impetus, with increased security, faster time, and decreased costs. All this was accomplished by the state and depended on it, in spite of the desires of individuals to the contrary. Created in the interest of the public, transportation, in this instance, was successful in attaining its object.

³³ Isambert, XVI, 158-161.

³⁴ *Ibid.*, XVI, 353-355.

³⁵ Pigeonneau, II, 399.

³⁶ Isambert, XVI, 351.

³⁷ Pigeonneau, II, 399-402.

³⁸ Isambert, XVI, 450-455.

³⁹ Pigeonneau, II, 402.

Among the important means of aiding commerce was the newspaper, which traces its origin to the days of Richelieu. "It was," said one writer, "together with the opening of the canals, the creation of letter posts, of relays, messengers and carriages, the crowning event which inaugurated modern times."⁴⁰ Richelieu not only used the newspaper for governmental purposes but the so-called journal was a powerful aid to commerce, by giving knowledge and publicity. When one considers that through it the King notified the nobles that they would not lose their rank if they engaged in commerce and announced that certain merchants or traders had become nobles, one can see the effect it would have on trade. Richelieu's constant concern for the welfare of commerce is displayed also in the reduction of the interest rate from the usual rate of 24 per cent plus to 18 per cent. There was a danger to commerce in that men neglected it for speculation. Therefore this more moderate rate was established to aid trade and industry and also to assure a sufficient profit to investors.⁴¹

Everything possible at that time was done to develop commerce. The government tried to make the frontier the only tariff boundary, but the local provinces refused to consent on account of local privileges, rivalries, etc.⁴² No matter how heavy the taxes were upon goods in France, similar goods imported from abroad paid at least as much. For example, a tax was laid on iron in 1632, but foreign iron paid more than French iron. This privilege accorded to national industry,⁴³ was a part of the protective aspect of the mercantilistic theories.

The question of money was a problem confronting the government in its efforts to aid commerce. The *Mercure François* brought up, in 1631, the necessity of trade and the injury done to it by counterfeit money. A chamber of moneys was established to deal with the matter, on the ground that otherwise the ruin of France would result.⁴⁴

Also the increase of money as a result of the discovery of the

⁴⁰ Pigeonneau, II, 461-463.

⁴¹ Isambert, XVI, 406. *Mémoires*, XXIII, 259-260.

⁴² Caillet, 267.

⁴³ Pigeonneau, II, 414.

⁴⁴ *Mercure François*, XVII, 713-720; Isambert, XVI, 365; Molé, II, 62-63, 195-196.

New World had caused trouble for French commerce. In 1636, the relations of 38 different foreign coins were established in an arbitrary way. Of course this plan did not work and in 1639 the relation of coins by weight was tried. Finally in 1640 all the lighter French gold coins were retired and refunded into the *Louis d'or* and smaller coins, with definite relative weights. In addition to the simplification of the monetary system the cost of mining was decreased, which was a gain for both the government and commerce, even though not all the monetary questions were solved.⁴⁵

In conclusion, it would seem that the efforts made by the government to improve the agricultural, industrial, and internal commercial conditions, though rather meager in results, were nevertheless important, when one considers the situation at that period. The general purpose to build up the state and center control in its hands was the common policy behind the government in whatever it accomplished in these particular phases of its administration.⁴⁶ The coming peace would doubtless have seen the attempt to complete this policy as applied to internal affairs. It was not Richelieu's lack of ability or of knowledge of conditions, but his lack of time, which accounts for his inactivity in regard to these particular phases of his administration. Furthermore, Richelieu, during his administration, was more interested in his external than his internal problems. His accomplishments with regard to marine, colonization, and foreign commerce, really constitute the positive side of his administration.

⁴⁵ Pigeonneau, II, 415-422; Levasseur, I, 255-258.

⁴⁶ "Richelieu's razing of the fortresses of the nobility was one of the most important steps ever taken towards internal freedom of intercourse within France." Schmoller, G., *The Mercantile System*, New York, 1902, I, 54.

CHAPTER VII

THE IDEAS AND ACCOMPLISHMENTS OF RICHELIEU AS REGARDS A MARINE

The keynote of Richelieu's position in regard to a war marine for France is found in the following quotation taken from his *Testament Politique*: "The sea is an object of dispute among all sovereigns, for they all claim that they inherit a right to control it. Therefore, the factor which does so is force and not reason. It is necessary to be powerful in order to have a recognized claim in the heritage."¹ The Cardinal then considers the maritime organization of England, Spain, and the Barbary states, compares the naval forces of these, and shows briefly how he wishes to make the French strong and active enough to be able, in times of war, to contend with advantage against the fleets of their enemies, and in times of peace, to defend their commerce, ships, and shores, from the aggression of pirates. Richelieu saw the need of a strong marine as a means of attaining a powerful state, and so was anxious to exert his efforts toward that phase of his administration.

In order to gain the opportunity to carry out his ideas along this line, in 1626, he saw to it that he was offered the position of "grand master, chief, and general superintendent of the navigation and commerce of France." The duties of this office had been carried on by several officials in the past, and were now put under the control of the Cardinal, as a further move toward the centralization of power which he was bringing about at that time. "God be praised," says the *Mercure François*, "that lacking in power because of the weakness of France on the sea, the King has committed to the care and administration of the greatest person of the century and most worthy pilot of the state, who has appeased the storms of civil war and the foreign tempests near and far . . . , the police and administration of

¹ Richelieu, *Testament Politique*, II, 48-50.

the sea, and as a result will build up commerce by means of power upon the ocean and immunity from the attacks of other nations thereby." ²

Up until Richelieu's time each of the former admirals and *connétables* had unlimited personal power, and they were bound to come into conflict with other officials.³ But when Richelieu took charge, all the duties were centralized in his hands. Some of them were as follows: "to give and furnish all orders which will be useful and necessary for navigation, in conservation of the rights of France, the advancement and establishment of the commerce and security of her subjects, at sea, in the ports, harbors and nearby islands."⁴ Thus one perceives that the powers which Richelieu was to possess were very extended; indeed the appointment placed under his control the merchant as well as the war marine. The duties of the Cardinal were defined in more detail than were those of his predecessors, and furthermore, they were broader in so far as they concerned the necessary field, so that he was able to decide as a sovereign ruler, all questions relating to the sea, even to disputes arising over the capture and disposal of the contents of wrecked vessels. That he took his office seriously, and tried to realize vast plans for the maritime and commercial development of France, is the final conclusion of most students of his life.

The way in which Richelieu carried on the duties of his office will illustrate both his impartiality and his honesty. Numerous passages in his letters show that he looked upon the position as a sort of sacred trust. Indeed, the Cardinal considered the appointment as being one which was not conferred upon him as a regular part of his official position, but was given to him with the idea that its great importance to the welfare of the nation and the King, required every loyal Frenchman not only to obey its precepts, but aid in carrying out its functions, if he was ordered to do so.⁵ This explains why the Cardinal refused to accept money for his work in this particular office.⁶ One of his letters illus-

² *Mercurie François*, XIII, 257-258.

³ Isambert, XVI, 198.

⁴ *Ibid.*, XVI, 194.

⁵ Richelieu, *Mémoires*, XXIII, 257-258.

⁶ Richelieu, *Lettres*, II, 346; *Mémoires*, XXIV, 275-276.

trates very well the spirit in which he took up his duties and some of the problems he had to face at the outset. He says, "that the King, knowing for some time how his vessels were preyed upon, was determined to put a stop to it. So he sent out escorts with the various merchant vessels and fortified all ports. Also, his majesty ordered me to take charge of commerce and navigation, and has sent forward a general order that clearance was to be taken from me rather than from Montmorency (his predecessor) . . ."⁷ He then goes on to cite cases in which his authority was not recognized. There existed at that time provinces, where local governments exerted almost unrestricted rights in maritime matters, and thus conflicted with the central authority, which was at that time the "superintendent of navigation and commerce." In regard to Brittany, one of the more or less independent provinces, he says that he does not seek to make innovations there, but only tries to give aid and means to all those who wish to trade, and to do so in pleasing and favorable ways. Many other letters indicate his great interest in the office.⁸ And so one finds that after this, he begins to introduce important plans in regard to forming a naval force, which was to be of great importance to France in the future. But first of all a few words in respect to the past history of this new war marine.

Francis I and Henry II had attempted to build up the navy but since then it had dwindled to nothing. In 1603, Sully was obliged to journey to England in an English vessel. On the way over he was escorted by some small French ships, which were forced to salute the English flag when they passed one of the vessels of that country.⁹ This was an insult which affected Richelieu deeply, as it indicated the fact that England was master over France, in so far as the sea was concerned.

Henry IV recognized the necessity of a strong marine, but his sudden death prevented any efforts in that direction, so that when the Cardinal went into office, France had practically no power on the sea. "Trade," he says, "was almost totally ruined and the King did not have one ship."¹⁰

⁷ Richelieu, *Lettres*, II, 350-352.

⁸ *Ibid.*, II, 346, 349-350, 409-412, 416.

⁹ Caillet, 287-288.

¹⁰ Richelieu, *Testament Politique*, I, 190.

Richelieu as far back as 1616 realized the weakness of the marine, and in his brief entrance into the "*conseil*" urged all villages to encourage the development of a marine as far as they were able.¹¹ Now, as has been pointed out, Richelieu's theories with regard to the marine have been borrowed from the ideas of men like Henry IV, Issac de Laffemas, from the *cahiers* of 1614, 1617, and 1626 as well as the writings of Montchrétien.¹² But yet one must give him credit for having the ability to weld all these ideas together in spite of almost superhuman difficulties, and to develop an exceedingly capable marine policy, which was largely put into execution before his death.

One of the most interesting phases of this policy was the fact that he consulted and informed the people of France concerning it. He seems to have especially desired their approval. For instance, the assembly of notables was made aware of his economic and political reforms through the speech of one of his representatives. They were unanimously approved by that body.¹³ The nobles felt that a strong marine was the sure means whereby France could develop and regain her former splendor.¹⁴ Richelieu also used the *Mercure François*, in reality a government controlled newspaper, to inform the public concerning the state of the marine. In it the former glory of France is brought out, especially under Charlemagne, Charles VI, and Francis I, particularly with regard to relations in the Levant. Then it shows how the religious wars had led to the fall of the fleet, which Henry IV had not been able to renew. "He who is master of the sea is master of the land."¹⁵ France had existed without sea control, while England, Spain, Denmark, and Sweden had increased in power by that means. Control of the sea meant power for the nations, and was necessary for France.

However, the Cardinal did not have to use many arguments to convince the people as to the need of a marine. France had many direct and indirect enemies at this time, and the critical state in which the nation was placed because of lack of sea con-

¹¹ Gouraud, I, 176.

¹² Pigeonneau, II, 381-382.

¹³ *Ibid.*, II, 384.

¹⁴ Richelieu, *Mémoires*, XXIII, 256-257.

¹⁵ *Mercure François*, XIII, 214-229.

trol caused him to take immediate efforts to reform the marine, with the full consent of the people. Of course, there was a certain amount of opposition from local governors and other officials affected by a centralization of its control.¹⁶ Furthermore, the Huguenots were not enthusiastic for a national navy. But it was just this local opposition which caused the Cardinal to go ahead. Richelieu knew that the marine exerted a direct influence on foreign relations, and this was the primary cause for his determined and farsighted stand with regard to this problem.

In the first place, one discovers that relations between France and the Barbary pirates were not very pleasant. The inhabitants of northern Africa had for many generations followed piracy as a profession, and at that time dominated the Mediterranean Sea. They had been so strong that it was impossible for a French vessel to venture out of a Mediterranean port without running the risk of being captured and having its crew taken to Africa as slaves.¹⁷ Indeed, no part of the French coast was immune from attacks of pirates of various nationalities. The "Barbar-*esques*" penetrated from ten to twenty leagues into the interior of Provence and were a source of constant terror to the people there, who constantly petitioned for aid, calling Richelieu's attention to the fine harbors upon which to base his sea control, where he could also build up an immense trade.¹⁸ Furthermore, the Spaniards and English committed piracies near French soil.¹⁹ Add to all this the fact that the nobles in France had no scruples about taking part in these depredations, and one can readily understand why the people of France demanded as a unit the creation of a strong marine.

On account of these raids and the unanimous demand of the people, Richelieu, in the second year of his ministry, made a

¹⁶ Richelieu was hindered in his work by many opponents, even with regard to the marine, which had more national support perhaps than any other measure. Some even said that he hid behind the claims of benefiting commerce, to obtain control of the sea and thus to make himself supreme. This helps to indicate the problems before him. See Richelieu, *Mémoires*, XXIII, 224-225.

¹⁷ *Mercuré François*, XII, 56-65; 75-79.

¹⁸ *Ibid.*, XII, 65-73.

“*Réglement pour la mer*,” in which he brought out the necessity of a strong war marine for France. “In order to guarantee to our subjects who trade in the East, safety from the losses which they have received from the pirates, and to maintain the regulation and dignity of our crown among foreigners, we wish that in the future there will always be in our ports forty galleys prepared to go out and quietly scour our coasts.”²⁰ As a result, Richelieu did all he could by means of treaties with the pirates, as well as the force of a great navy, to make the pirates respect the flag of France on the high seas.²¹ He succeeded in accomplishing these aims to a remarkable extent, but his successor Mazarin, through neglect, permitted the pirates to become strong again and continue their depredations. However, there were other influences besides that arising from the acts of the pirates, which caused Richelieu to take such an active stand with regard to the navy.

Diplomatic relations with such countries as England and Spain, which affected both the political and economic growth of his country, caused the Cardinal to consider a strong marine as the most important weapon with which to meet these nations. “On the power of the sea,” he says, “depends the lowering of the pride of England, Holland, Spain, . . . against us, and the ruin of the Huguenots.”²²

The best source of his ideas on this particular subject is found in his *Testament Politique*, where, after discussing the advantage of certain types of ships on the ocean and the Mediterranean Sea, he goes on to say that a great state would never be in such a position that it had to receive an injury without taking a just revenge. He points out the supremacy of the English over the French. “This,” he says, “works as an injury to the commerce of France, especially to her fisheries.” He then comments on the fact that England and not France can fix the duties on commodities because of her strength at sea. The latter in her state of weakness could do nothing. He goes on to relate an incident

²⁰ Richelieu, *Lettres*, II, 163-166.

²¹ Masson, P. *Histoire du commerce Français dans le Levant*, XVII^e Siècle, Paris, 1896, 28.

²² Sourdis, H. de, *Correspondence*, Ed., E. Sue *Collection des Docum.*, inéd. de l’hist. de France), 3 vols., Paris, 1839, I, Introduction, II-III.

in which the British flag had to be saluted in preference to the French standard, because of the naval inferiority of the latter. In conclusion, he says that only force will make England recognize France.

He then takes up the naval strength of France, pointing out the fact that the utility of the Indies to Spain compels her to have a large sea force. "We should be able," he says, "to oppose and put a stop to any of these enterprises against us. If your majesty is powerful at sea, you will be able to attack Spain on her lengthy coast, and they will conserve most of their revenues in an effort to guard their territory. This danger will keep them from troubling their neighbors, as they have done up to the present. For they will need all the power they have to protect themselves . . ." ²³ He closes this section by describing the excellent location of France in respect to harbors, emphasizing the fact that she has ports on the ocean and the Mediterranean Sea as well. This is an immense advantage. Then he comments in more detail on her excellent ports. "Brittany alone," he says, "contains the best harbors on the ocean, and Provence has better ones than England and Italy together. Spain has to have a large navy in order to keep her many seaports under control. Just as the sea divides Spain from Italy, so France separates her from the rest of her territories." ²⁴ Richelieu realized very clearly the importance of a war marine to France, because of her weakness on the political and commercial side in her relations with foreign nations. One must admit that his desire for a fleet almost implies aggression against Spain for commercial and territorial rights. These quotations taken from his last work, written as a result of twenty odd years of service in the employ of his country, certainly indicate his final ideas on this subject, and throw very valuable light on his aims at that time.

There was yet another cause which influenced Richelieu to build up a war marine. This was the rising colonial trade of France and her growing commerce as a consequence of it. Richelieu realized that in order to develop and protect colonies and

²³ Richelieu, *Testament Politique*, II, 49-52; *Mémoires*, XXIII, 257-258; *Mercure François*, XIII, 208-213.

²⁴ The Spanish Netherlands, Luxemburg, and the Franche Comté were the important territories separated from Spain by the French nation.

commerce, a strong navy was a necessity. Now, as he wanted France to be a powerful colonizing nation, it is natural that he should turn toward the development of a navy as one of the first steps in the promotion of this idea. "A force on the sea is necessary to keep it clear of pirates, to protect commerce and increase the grandeur of the state. The King takes to heart all the affairs of commerce and trade inasmuch as he cannot separate individual interests and his own. All are involved in the question of power on the sea and against those who would exclude them, thus to the detriment of their trade . . . etc."²⁵ The question of commerce was a national affair, and affected all. And the very fact that Gaston, the hated enemy of Richelieu, supported him in his efforts to secure a marine, indicates the importance placed on this part of his administration.²⁶

"Power in trade and commerce depends on sea power," says the *Mercure François*. "For example, the naval force of England and also of Holland all have increased trade by that means, as well as the Portuguese and Venetians. The Hanseatic cities of Germany also having failed to protect themselves have sought the protection of some powerful Princes on the sea. French commerce shows a decrease and thus the absolute necessity of a fleet. France needs to be protected in war on the sea, and to be strong in commerce in times of peace through protection. Thus not only for political, but for commercial reasons, it is desirable that the French nation be a strong sea power."²⁷ This quotation from Richelieu's paper sums up his entire attitude toward that problem. He appreciated the natural advantages which France had in regard to commerce, and the development of a strong marine, and was farsighted enough to desire to build up for the future. At no other place is his economic statesmanship better illustrated than in his efforts to create a war and commercial marine, in spite of the numerous obstacles in the way. "There is no Kingdom so well situated as France and so rich in all that is needed for it to become a power on the sea. To do this we must see how our neighbors govern themselves in that work, we must make great companies, and oblige the merchants to enter them. Small merchants cannot meet the diffi-

²⁵ *Mercure François*, XIII, 229-233. Richelieu, *Lettres*, II, 331-332.

²⁶ Richelieu, *Mémoires*, XXIII, 261-262.

²⁷ *Mercure François*, XIII, 233-237.

culties of the sea . . . etc.”²⁸ A combination between the merchants and the government to furnish mutual aid on the seas, was the plan of Richelieu, which would have doubtless produced great results if he had lived long enough to carry it to its logical conclusion, namely, a great merchant and war marine.

Turning to the actual accomplishments of Richelieu with regard to the marine, one finds that it was during the years 1629 to 1635 that he began seriously to consider this phase of his administration,²⁹ although there is evidence that he contemplated action along this line from the very start.³⁰ Financial troubles,³¹ and disturbances, such as those with the Huguenots, prevented his doing much until later. But he admitted the weakness of the French on the sea, and the injury done to their commerce by other powers. “Our neighbors,” he said, “buy our goods and sell theirs at their price. Now this state of affairs should cease. Therefore, his majesty is resolved to have 30 good vessels of war to protect our coasts and inspire respect for us on the part of our neighbors.”³² From the very start the Cardinal had a definite policy outlined and stood ready to carry it out even to the smallest detail.

The first thing he did with reference to the marine was to place the situation before the assembly of notables in 1626. As a result of this meeting the grand edict of reformation of 1629, or the *Code Michaud*, was passed. This edict, written by officials of the Cardinal, but expressing his views,³³ advocated the free exportation of wheat and wine except in times of famine, authorization for gentlemen to exercise the duties of merchants and colonists; forbade French sailors to serve under foreign banners; and established the convoy of merchant ships by war vessels; action against the pirates was contemplated; exportation of merchandise in foreign boats was forbidden if French vessels were available; there was prohibition of the importation of foreign cloth; jurisdiction in maritime matters was reserved to

²⁸ Richelieu, *Mémoires*, XXIII, 258-259.

²⁹ Caillet, 292.

³⁰ Richelieu, *Lettres*, II, 163-166; 290-292; 295-296.

³¹ Richelieu, *Mémoires*, XXIII, 126.

³² Richelieu, *Lettres*, II, 386, see note.

³³ Isambert, XVI, 329, etc.; Levasseur, 243.

tribunals of the admiralty, etc. If these provisions had been carried out France would have developed a great commercial and war marine based on rather remarkable modern protective ideas, part of which endure at the present time. This code is a striking example of the emphasis that was being placed on the economic side of foreign relations at that time. It is a pity that internal opposition and external problems prevented its entire execution.

Finally, in 1629, the Cardinal was free enough from other administrative troubles to take up the question. He decided that conditions in the land in so far as they affected the creation of a war marine, should be investigated. Accordingly in 1629 and 1633, he ordered two of the best trained men in the Kingdom, Messrs. Leroux D'Infreville, commissioner of the marine, and Henri De Séguioran, Seigneur de Bone, Knight and Councillor of the King, to carry out this project. The former was to inspect the coast bordering on the Mediterranean Sea. They were to report on everything which concerned the marine and were also to reestablish the right of anchorage, which Henry IV had yielded to foreign vessels.³⁴ "These duties, executed with rare intelligence, cast a rather depressing light upon the deplorable situation in which they found all forms of sea activities, a situation rendered still worse by the conflicts of jurisdiction which were being constantly brought up by the governors of provinces or the admirals or the nobles whose feudal estates bordered on the oceans and rivers."³⁵ These men reported that the ports were without garrisons, that the coast of the ocean was harried by the pirates of Africa and Spain, and that the harbors and the castles built around them, both on the Atlantic Ocean and the Mediterranean Sea, were in a very unfortunate state of neglect. In addition to all this, there were "river rulers," who exacted tolls from travelers who went up and down the rivers which passed through their territories. They reported in detailed fashion as to the condition of the coasts of France, the duties collected, armaments, boats, the means of defense in the ports, the spirit of the inhabitants of the coast towns, the number

³⁴ Richelieu reestablished the old anchorage charge of "*3 sous per tonneau*," on foreign vessels unloading their freight in France. See Sourdis, III, 173-175.

³⁵ Sourdis, III, 173-225, etc.

of ships engaged in navigation, and the number of their sailors, carpenters, pilots and, captains. Finally they gave an exact analysis of the different claims of the dukedoms, syndicates, and corporations in France, and recommended as a result, that his majesty provide war vessels to protect the commercial ships as well as the ports.³⁶

Thus Richelieu became aware of the fact that trade was at a low ebb; that other nations because of the weak marine of France could do what they wanted so far as concerned their relations with France; and that the position of France both in the East and the West was becoming worse. He came to the conclusion that something must be done to build up her weak and almost rotten fortifications, and her small and almost useless navy, if France was to command the respect of foreign nations and even of the pirates.

The program of Richelieu in regard to a war marine might be broadly classified in the following manner: (1) laws relating to maritime authority and accountability (the bureau of accounts); (2) the formation of a "personal marine;" (3) the restoration of dilapidated coast fortifications and the creation of new ones; (4) the creation of a war marine and of naval equipment.³⁷ A brief consideration of the above seems justifiable.

The Cardinal in taking up that part of his work which was concerned with the passing of laws governing affairs on the sea, displayed not only his fairness to all other sea powers, but his knowledge of matters pertaining to the marine. He soon placed the control and conduct of all acts relating to it in the hands of definitely assigned officials. The latter formed what is called his "personal marine," and they conducted and managed affairs relating to the sea according to fixed rules and regulations imposed by him. He tried to put an end to the conflict of authority existing in France, in respect to the control of military affairs. Seven Bureaus of Admiralty were established, to be composed of officials already appointed by certain individuals, and in the future to be nominated by the Cardinal himself and his successors, who were "grand masters of France." They were to have under their control all criminal and civil

³⁶ Sourdis, I, Introduction, XXXI-XXXII.

³⁷ Caillet, 301-302.

affairs, and all acts connected with the state government and navigation on the high seas. Also, they were to have charge of the proper disposal of wreckage.³⁸

In carrying out his scheme relating to the formation of a marine, Richelieu even went so far into details, as to change the method of getting sailors, which had hitherto been one of the great causes of the weakness of the French on the sea. He had a census taken of the number and addresses of sailors and carpenters in every harbor in France. He ascertained the number of vessels and their equipment, and the number and size of the harbors, and from that information as a basis, he determined the quota of sailors to be furnished by each province, and the amount of money that might be levied for ships and their equipment.³⁹ In addition to all this, he established schools for pilots, put the coast in a state of defense, created new ports, enlarged others, and finally established three arsenals. He spent over 359,000 livres in 1635 for the fortifications of Brouage d'Orleans and the island of Ré. He wanted to make the former the center of maritime power upon the ocean. He strengthened the ports on the Mediterranean in a similar fashion, especially Toulon, which he desired to make the war center of the nation on the southern coast.⁴⁰ However, the crux of his efforts in building up the power of France lay in the increase of the number of war vessels and the enlarged equipment.

Henry IV had realized the necessity of a fleet, but it was left to Richelieu to carry this idea into execution. "He resolved," says Caillet, "to endow France with a military marine, that is to say, a military force truly belonging to the state, and not furnished by cities, as had previously been the case."⁴¹ Up to this time, there had existed the custom of allowing particular individuals and certain interests to build vessels and rent them to merchants for their protection. But Richelieu saw that this was not a good thing, and, after he had triumphed over the Huguenots, he was very careful to hold all ports

³⁸ *Mercure François*, XX, 924-925.

³⁹ Richelieu also issued orders in 1635, that all vagabonds, beggars, etc., should be inducted into marine service to fill up the huge gap in the number of men available for service. See *Mercure François*, XX, 923.

⁴⁰ Sourdís, III, 359, et seq.

⁴¹ Caillet, 310.

accountable to himself, to make himself master of all the magazines, all the cannons, and other war materials. Lastly, he forbade all vessels to bear arms, unless they had royal permission.

Under the orders of the council of notables in 1626, which had really been called and conducted under the direction of Richelieu, the fleets of war vessels were greatly increased. But it took time before the maritime service was really well organized.⁴² As late as 1626, when France wished to put an end to the ravages which were being made by the Barbary pirates on the ocean, they could not find enough vessels to carry out the task and had to get twenty from Holland. It was particularly during the siege of La Rochelle, as has been said before, that Richelieu felt the inferiority of the French war marine. After that he set aside a certain sum each year for the creation of a navy.

From 1630 to 1634, the naval power of France gradually increased, and finally consisted of three large squadrons. As a result, the pirates were suppressed for the time being, and Spain was thrust aside, so far as her claims on the sea were concerned. "It was to be for France and for the great minister, who had increased his country's reputation so much, a just subject of pride when their fleet of eighty-five vessels passed triumphantly across the sea, where some years before she had possessed a fleet less powerful than that of the smallest city of Italy."⁴³ He must have realized that he had now in his possession the implement by which he could carry out many of his political and economic plans to the glorious ends which his fertile brain had assigned to them. Up to the very last, he was occupied with this problem, although hindered by financial difficulties.⁴⁴

Thus the Cardinal saw his plans reach what seemed to be a successful conclusion. But death took him away just at the time when he was most needed. The splendid fleet, like a flower nipped by an unexpected frost, dwindled away almost to nothing after his departure. The good fruits of his work along this line were mostly temporary. No one continued this

⁴² Caillet, 314.

⁴³ *Ibid.*, 311.

⁴⁴ Richelieu, *Lettres*, VII, 292, 303.

task, which he had so well begun, until the age of Colbert, and then it was too late to prevent irreparable injury.

But before reaching a conclusion, it seems best to consider briefly the importance of his work so far as it concerns the navy of France. L. P. Fournier in the preface of his valuable work entitled *Richelieu*, writes with much enthusiasm concerning the progress of sea power under Louis XIII. "Favored with the admiration of the world," he says to Louis XIII, to whom he dedicated the book, "France now finds herself famous through your victories. She now sees the great navy and the harbors open to receive and fortified to protect them. Well supplied magazines are established on both coasts. All of which is equally useful in the promotion of commerce, as well as warfare. Your majesty's fleets have controlled things on the Mediterranean. Indeed, Spain has been forced to acknowledge the power of the French fleet, and thus future glory must be approaching." ⁴⁵

M. Masson in his *Histoire du Commerce Français dans le Levant*, continually emphasizes the point that it was the development of a navy under the Cardinal that prolonged the Eastern trade of France with the Levant, which was on the decrease at that time, because of the lack of protection.⁴⁶ M. Sue also sums up the work of Richelieu very appropriately when he points out the fact, that when the Cardinal built up the navy, he laid the foundations of a great and splendid system of military marine, which would serve as an offensive arm to combat the enemies of France, and as a shield or protection to aid her commerce, and thus by making transportation of goods safer he made them cheaper, which in turn aided in the support of the war marine.⁴⁷ The Cardinal's economic turn of mind is very well illustrated by the above passage. He evidently intended to pay for the marine by an increase of taxes on the subjects whose prices were lowered because of cheaper transportation. These taxes were, as a rule, borne by the merchants themselves. "His system," says Sue, "was a marvelous exposition of thought, force, and solidarity." ⁴⁸

⁴⁵ Caillet, 314-315.

⁴⁶ Masson, 117.

⁴⁷ Sourdis, I, Introduction, VII-VIII. M. Sue is considered an authority upon the activities of Richelieu with regard to the marine.

⁴⁸ Richelieu's ability with regard to the marine is nowhere better illus-

It was carried to extremes by those who came after him, so that, not being sufficiently supported by maritime commerce, the sea power of France died from lack of sailors, finances, defenses, and good harbors. Indeed, France just before the world war adopted an active policy developing her war marine, and in doing so was influenced by the same motive which compelled Richelieu centuries ago to do likewise.⁴⁹

After all, this phase of his administration is fundamentally economic. "He," as Sue says, "wished to give also a large development to commerce, merchant navigation, and colonial enterprises, interests upon which he intended to base the development of a military marine, preparing himself thus for the eventualities of a war during the intervals of peace."⁵⁰ The Cardinal knew that if he was to obtain the great state he desired, France must be strong in trade, colonies, and in political influence. A war and merchant marine was the means by which this was to be obtained. It is certainly a pity that Colbert was not able to carry to a successful completion the plans for the marine as set down in Richelieu's marine code.⁵¹ If the Cardinal's naval ideas had been carried out, the chances are that the subsequent colonial and commercial history of France would have been entirely different. Richelieu was constantly favoring those engaged in commerce.⁵² He realized that trade would benefit every individual in France. "France," he says, "will add in a short time to her natural abundance what

trated than in the complete statement which he has left of all receipts and expenses connected with that phase of his administration, during the years 1631 to 1639. It is a striking commentary upon the efficient financial administrative abilities of the man. See Sourdis, III, 359, etc.

⁴⁹ See Braeq, C., *France under the Republic*, N. Y., 1910, 34. M. Braeq points out the efforts of France to strengthen her fleet before the war, so as to be able to meet her rivals on equal terms, and also be strong economically, and thus protect her commerce and colonies from the possible insults of rival powers.

⁵⁰ Sourdis, I, Introduction, XXIX.

⁵¹ Pigeonneau, II, 411-412. In 1642, de la Porte, Intendant of commerce and navigation, was ordered to write a general statistical account of the marine. Richelieu was fond of statistics. He gave therein the laws and ordinances concerning the marine. It was really the sketch of a maritime code of which Richelieu's death prevented the completion. See Sourdis, III, 321, etc.

⁵² Gouraud, II, 195.

commerce brings to the most sterile nation.”⁵³ He even went so far as to point out the fact that cheapness of food for workmen would be brought about through increased transportation facilities on rivers, etc.⁵⁴ There can be no doubt that he was preparing the marine, not only to oppose his great political rivals on the sea and protect for the time being French traffic on the water, but also that he was looking forward to the time of peace, when he would be able to found the great mercantile nation of which the marine would be the strong arm for defense, and possibly, for economic if not political aggression.

⁵³ Richelieu, *Testament Politique*, II, 78-79.

⁵⁴ *Ibid.*, II, 78.

CHAPTER VIII

THE IDEAS AND ACCOMPLISHMENTS OF RICHELIEU AS REGARDS COLONIZATION

Before the age of Richelieu, France had accomplished very little along the lines of colonial development. Indeed the period in which he came into power was really the time when the settlement of North America, for example, was in its infancy, so that France had really not considered very seriously, up to that time, the opportunity of carrying on colonial projects in the new continents, although a beginning had been made by Champlain in 1608. Furthermore, internal troubles, religious wars, and unfriendly foreign relations all tended to prevent the predecessors of Henry IV from sending any expeditions of importance outside of the vicinity of France and Italy. On the other hand, other nations grew stronger on the seas and in colonial enterprises. Spain and Portugal rose for nearly a century, but declined about the time of the Armada in 1588. And then came the age when England and Holland gained rapidly on the sea.¹ England took from France the cloth industry in the Hundred Years' War, and built up her state on a strong protective basis. The Hanseatic league decayed and in its place rose Holland. Colonies in America, Africa, and Asia resulted from the growth in sea power of these nations, and the latter acquired wealth in consequence.

In the seventeenth century came for France the age of Henry IV, Richelieu, and Colbert, and as a result colonial commerce underwent unprecedented growth. What little colonial activity had occurred before the age of Henry IV was based on the motive of discovery and exploration, rather than of industry and settlement. But when Henry IV came to power, mercantilistic ideas were just beginning to take a definite form, and the value of colonies as a means of monetary gain

¹ Levasseur, E., *Histoire du Commerce de la France*, 2 vols., Paris, 1911, I, 275-277.

began to be recognized by French statesmen. In other words, Henry IV and Richelieu simply applied in France the system inaugurated by England and Holland, namely, a plan of colonization founded upon the general interests and permanent needs of the country, and not upon such dreams as a search for the northwest passage, or some other particular interest, such as the religious basis of the colonization of Coligny.²

Inspired by the colonial activities of England and Holland, both Henry IV and Richelieu tried to foster ideas in regard to the foundation of great colonization companies, which were more or less new to the French people. This was done "in order to make ourselves masters of the sea, and to form great companies, to encourage merchants to enter, and give great privileges to these companies as they came into existence, just or foreigners have done."³ However, lacking money, as was the case with the governments of England and Holland, the French government could not back the companies, but simply encouraged, guided and protected them, leaving in the hands of individuals the financial risks and the details of administration.

Not much in a colonial way was accomplished by Henry IV. "Colonial enterprises lacked experience and national character," says one writer;" "they were too local, weak in capital, and narrow in viewpoint to use their privileges to the utmost."⁴ In fact Henry IV did not live long enough to form any definite colonial policy, so that it fell to Richelieu to initiate the colonial expeditions of France.

When the Cardinal came into power, he began immediately to build up the strength of the French nation as a colonizing state. Aided by the accomplishments of Henry IV, and such ideas as are found in the work of Montchrétien,⁵ he made colonization a political and economic question, involving the growth of France.⁶ This problem was treated with diplomatic reserve, and as a consequence little was written concerning it by contemporary writers. However, it is known that Champlain and other well known advocates of colonization projects recognized in the Cardinal the true leader of this movement.

² Pigeonneau, II, 329.

³ D'Avenel, *Monarchie Absolue*, III, 209-210.

⁴ Pigeonneau, II, 346.

⁵ *Ibid.*, II, 360-363.

⁶ Deschamps, 82-83.

Richelieu saw the advantages and difficulties in the way of colonial expansion on the part of France. He knew that he would have to face the opposition of England, Spain, and Holland on the sea. But that did not stop him, for as soon as he assumed the office of the head of navigation and commerce, he began to plan a war and merchant marine and commercial companies, which were to settle and build up economically and politically new territorial possessions for France in America, Africa, and Asia.

His principal aims in forming colonies were: (1) to establish and multiply colonies, to people them with French colonists, and maintain there the Catholic religion to the exclusion of all others; (2) to enliven commerce and promote a war marine for protection. It is interesting to note that Colbert borrowed this policy from him and completed it. "Indeed," says one writer, "people have not realized the important part played by Richelieu in colonial development, or have mixed his achievements and initiative with those of Colbert. In the thoughts of Richelieu, the maritime and colonial supremacy of France holds a place equal to the idea that the Hapsburgs must be ruined."⁷ These were the two threads, which were really connected and were to unite to form the grandeur of France. In 1625 the Cardinal addressed to Louis XIII a proposed law for the sea, and a memoir which contained his new ideas, namely, to build up the marine as a preparatory measure of which colonization was to be the end.⁸ "In 1626," says one writer, "Richelieu received five memoirs or letters on the state of commerce and the marine. He was himself the author or the source of inspiration of a great number of contracts, letters, reports, and statistics having the same object."⁹ Among the memoirs, two are of special interest, one by the Chevalier Isaac de Razilly, and an anonymous memoir of November 26, 1626. De Razilly pointed out the need of navigation in spite of opinions to the contrary. He advocated clearly the advantages of the exchange

⁷ Deschamps, 74-76; Bonassieux, L. R., *Les Grandes Compagnies de Commerce*, Paris, 1892, 5.

⁸ Richelieu, *Lettres*, II, 163-167.

⁹ Deschamps, 87-88. The many memoirs, projects and plans addressed to Richelieu concerning the marine, indicate the interest shown by the people in this phase of his administration, and the recognition of his leadership in the undertakings to be carried out.

of goods, and the adaptability of the French for carrying on long voyages. (Evidently there was opposition to any commercial policy France might engage in at this time.) Then he outlined a plan of reform concerning navigation and colonies, exactly similar to that which Richelieu and Colbert followed.

In the first place, France was to regain her sea power and make conquests and establish trade all over the world. Also, men were to be encouraged to undertake navigation, nobles who participated were to retain their rank, and merchants were to be ennobled because of their accomplishments in this particular field. Companies were to be founded in which the King, the ministers, the princes of the blood, and great seigneurs should be interested, as well as individual cities and the clergy as a class. Colonies were to be established in the Americas, and according to the anonymous memoir, in the East Indies as well.¹⁰ These two memoirs, which were in harmony with the policy of Richelieu and Colbert, looked forward to the fall of Spain and Portugal, and the rise of France in commerce and navigation in the Orient, the Mediterranean, and Asia. The downfall of the Hapsburgs was to be a necessary prelude to the rise of France as a commercial and colonial power. This likely was one of the guiding forces behind the rivalry of the Bourbon and Hapsburg houses at this time. Colonization was an important part of governmental administration, and the fact that the King in 1626 gave a great masquerade ball to which the fur-trading companies sent representatives dressed in the native costumes of the people of the various colonies and trading stations of France, indicates the interest displayed by French society in the economic affairs of their country.¹¹ There was a little opposition to Richelieu's commercial policy, but it was spoken, not written.¹²

The Cardinal outlined his program from the very start. "Indeed," says Mathieu Molé, a contemporary, in one of his memoirs, "the Cardinal wished to present to the assembly of notables in 1627 some new edicts concerning the state of the marine, trade, and navigation, in order to justify his position as head of the kingdom. He established by means of an edict,

¹⁰ Deschamps, 90-93.

¹¹ *Mercure François*, XII, 187-190.

¹² Deschamps, 131.

a perpetual navy of forty-five vessels, which he said would return the French war marine to its former state of splendor. He also wished to create some important companies to which he would grant privileges. He then appointed me to examine the first proposition which was made by Nicholas Witte, Jean du Meurier, esquire, and other French and Flemish merchants, who have formed a company called, '*La Nacelle de Saint Pierre Fleurdelisée*,' with the purpose of establishing in France an immense trade in all merchandise which enters into commerce, of introducing fisheries, of building vessels, and other uncommon duties, and finally of increasing in value lands and colonies which have not returned much profit hitherto.''¹³ This company was to build up not only French colonies, but France itself.

The text of the agreement adopted by the Cardinal with respect to this company is to be found in the notes or memoirs of Mathieu Molé. Since it gives a correct idea of all that relates to external commerce and to the great industries, it seems best to give the principal articles of the contract, especially in as much as all the companies formed by Richelieu conformed more or less rigidly to this type.⁴¹

I. The heads of the company were to take over 400 families within a month of the day of negotiating the agreement. These families were to be composed of persons suitable for commerce, fishing, manufacturing, and agriculture. Besides these, there were to be sent no less than twelve vessels completely equipped for the expedition. By so doing, the aforesaid company would be allowed to trade both by seas, rivers, and land, to establish fisheries upon the sea, and manufacturing concerns of all sorts, to plant sugar cane and refine sugar, to work mines, to make porcelain vessels and crockery by the methods of the Indies and of Italy, and finally, to use all other resources and manufactures which they recognize.

II. All Flemings, Hollanders, and others who should go over to the colonies were to be regarded as Frenchmen and enjoy all their rights.

III. Rewards were offered to those who invested money in the company or worked on behalf of it. The crown intended

¹³ Molé, Mathieu, *Mémoires*, 4 vols., Paris, 1855, I, 422-448.

¹⁴ *Ibid.*, I, 422-448.

to honor those who took up the work more than ever before, in order to attract persons who were capable of aiding the proposition in any way. People of every condition, clergy, nobles, and officials could enter and put their money into the company without injuring their position or endangering their privileges. Indeed, in order to aid industry and colonization, His Majesty was to ennoble thirty-two persons, whether they were Frenchmen or foreigners, who would enter the company during the first year of its establishment, and put at least 5000 pounds into its funds without having the power to withdraw the money for six years, and also some who did not invest any capital in the enterprise, but who devoted all their ability and energy to the advancement of the aforesaid company.

IV. His Majesty was to give the company two sites not occupied as yet, one on the ocean, the other on the Mediterranean. They were to have the power to build houses of business in those places. In each of these a market place was to be established with fairs (two yearly fairs of eight days each), etc. All inhabitants should be exempt from the payment of the *aides*, *tailles*, etc., which fell upon other ports.

Articles V and VI provided for the government and the working of the mines in those territories, in which the colonies were to have supreme rights, subject only to the final decision of the "grand master of commerce," who was Richelieu.

VII. All vagabonds, beggars, petty criminals, etc., were to be taken by His Majesty's orders into the employ of the company.

VIII. His Majesty was to allow the company to undertake voyages abroad, to establish colonies at advisable places, even in Canada and New France, to conquer lands beyond those which were under the control of His Majesty, to use them for profits of the aforesaid company, to which full and entire possession was given, on condition that they should be faithful and swear homage to His Majesty. The latter permitted them to trade with all companies which were not declared enemies of the Kingdom, and even countries like Russia, Norway, Sweden, and Hamburg... The articles of agreement which were made with the latter nations, were to be communicated to Richelieu as superintendent of commerce and navigation. Fin-

ally, "if the directors of the company should discover new lands, they could enjoy the fruits of them separate from the other colonies."

The principal articles of this agreement have been given, because they indicate the main ideas of the Cardinal's policy toward colonization. It shows first that he desired to develop the colonies. It illustrates the fact that he wanted to found possessions, which were to be almost self-governing, with this one exception, — they were to be responsible to the chief of commerce and navigation in France. In fact, Richelieu put himself at the head of almost all commercial companies founded at that time. Masson criticizes Richelieu because he made the colonial companies too centralized, and forced them all to depend on the government of France as a final authority. Yet the agreement cited above seems to give the colonies plenty of leeway in which to develop without interference of the home power.¹⁵

But, before generalizing concerning Richelieu's colonial policies, it is well to look further into the actual accomplishments of the Cardinal in that particular field.

The company whose charter has just been quoted failed because of the lack of credit and funds to maintain it. Furthermore, the directors did not carry out their promises and sought only to profit by the monopoly which they possessed and from which they derived temporary gains. They kept up the project with one purpose in view, namely, to sell to the colonists who had been sent over, goods at a high price, and to buy furs from them as cheaply as possible. Champlain never ceased to protest against the attitude of the directors toward the colonists.¹⁶ He himself desired to found a colony which would take up the threefold purpose of colonization, namely, agriculture, conversion of the natives, and commerce. The only result of his plan was the establishment of new fur-trading stations in North America. But there is another explanation for the failure of the company. It was too far-reaching in its scope and plans in that it proposed a thousand things to do and a thousand ends to achieve. It wished to establish fisheries, exploit mines, drain marshes, develop both foreign and domestic commerce, colonize the West Indies, etc. It was a universal company, but fell before it got really started. It was a society which wished to

¹⁵ Masson, *Histoire du Commerce Français dans le Levant*, 174.

¹⁶ Caillet, 337; Zeller, B., *Richelieu*, London, 1884, 184.

embrace all, but it could not organize itself.¹⁷ In the last place it was, perhaps, too modern in its purpose.

The company of Morbihan was the next to be formed, in 1626. It obtained its name from a port in Brittany, where its counting offices were established. A group of men called "the Hundred Associates" signed the agreement, so that it was often called "The Hundred Associates" company. Its articles provided for a fort at Morbihan, 100 vessels, a capital of 1,600,000 *livres* and the monopoly of the commerce of the East and the Levant by land and by sea.¹⁸ Indeed, such was the magnitude of its designs that Richelieu says the English and Dutch were alarmed, fearing that the King by that means would soon make himself master of the sea.¹⁹ Spain had no less fear for her Indies and well might have, when one reads in Richelieu's *Testament Politique* the statement, that the only way to obtain footing in the West Indies, is by driving the Spanish out by means of a war.²⁰ However, this company came to naught, because of the failure of the local *Parlement* to register the edict creating it, arising from a conflict between it and the local estates general of the province in which Morbihan was located.²¹ Yet the formation of this company had important results in that herein one finds de Razilly's idea realized; namely, that colonial enterprises should be participated in by all.²² In it is apparent the disinterested stand taken by the Cardinal with respect to colonization. In return for all the advantages given the company, Richelieu demanded only one thing, namely, that it would make the greatest and most rapid fortune that was possible, and in whatever manner it wished, either by fisheries, by boat building, or by cultivating the soil of the colonies or by establishing some manufactures, etc. "It was an admirable example of broad and decisive views which indicate the correct judgment of the great man in all affairs of state," says one writer.²³ This company likewise did not

¹⁷ Bonassieux, 363.

¹⁸ Levasseur, 281-282.

¹⁹ Richelieu, *Mémoires*, XXIII, 127.

²⁰ Richelieu, *Testament Politique*, II, 71.

²¹ Richelieu, *Mémoires*, XXIII, 128.

²² Deschamps, 88-91.

²³ Gouraud, I, 197. Concerning this Company see Richelieu, *Lettres*, II, 346-349; *Mercurie François*, XII, 44, etc.; Richelieu, *Mémoires*, XXIII, 127.

succeed apparently because of the fact that the people of France were not capable of so great commercial enterprises at that time. However, Richelieu went on and formed other colonies, not at all discouraged by past failures. In this connection it is important to remember that his company was the prototype of the East India company of a later date.

Richelieu now turned his attention to America. Various attempts had been made to settle that country before his time, and there was no little interest to be found in France concerning this far-away land of promise. The first voyage by Frenchmen were those of Jacques Cartier, Robeval, and others from 1524 to 1599. In 1541 the first attempt at a permanent establishment was made by Robeval. It was abandoned the next year. Various companies began to be formed to settle in Canada. Finally one was established in 1602 by the leading traders of Dieppe, Rouen, and La Rochelle, with fur trade privileges, etc. Explorations were made under the leadership of one especially notable man, Champlain. In 1603 *Sieur De Monts* became chief of the colony of Canada, undertaking to give the King one sixteenth of the product of the mines. In 1606, in addition to the fur trade, the farming and exploration of the new territory began to be considered seriously. Some new explorations had made known the fertility of the soil. In 1608, Champlain was again sent out by a company with three vessels, which repeopled Port Royal and founded Quebec. But failure to take up agriculture in the colonies and constant opposition on the part of Holland prevented any of the French colonial plans from achieving a substantial measure of success before 1627.

At this time a new company was formed called the company of the "Hundred Associates" of New France or Canada. This organization, which lasted longer than any other of Richelieu's creation, was granted its charter in an edict issued by him when before La Rochelle.²⁴ Many merchant traders and other rich persons had proposed to form companies to support the colonies already there, and to establish new ones in the vast and little known country. It was to these first associates that the King by his edict conceded the following privileges and conditions: the company must send two or three hundred men of all

²⁴ Bonassieux, 350-351.

trades, and during the following fifteen years four thousand persons of both sexes. The company should support the inhabitants for three years. No foreigners or Protestants should be among them. Furthermore, three churchmen should be in each habitation, etc. Homage was to be paid to the King, and a crown of gold to the weight of eight marks, should be given him on his accession to the throne.

In return for these requirements, the company was to have the following privileges: full proprietorship of Quebec with all the land reaching from Florida to the Arctic region, including the land of the Saint Lawrence river; the cession of all mines and minerals discovered; the right to build fortresses; monopoly of the fur trade and other commerce, etc. Fishing rights were to be open to all the King's subjects. The King was to give two war vessels, and grant exemption from customs. Finally, the principal personages were to receive letters of nobility.²⁵

However, in spite of the encouragement given the colonists by the government, they failed in the end because of the fact that they tried to buy from their colonists goods at a low price, and sell to them at a high price. This was also the case with the natives, who preferred to trade with the English and Dutch who gave them better prices. Then there was a lack of support in the mother country easily to be explained by the difficulties confronting France during this period. As a result, the Dutch soon obtained most of the commerce with the natives, and in 1629 the English captured Quebec and the surrounding territory.²⁶

In 1632, Champlain pointed out to Richelieu the necessity for the restitution of New France to the mother country.²⁷ As a result the Cardinal sent six armed vessels across the Atlantic and compelled the English to cede it back. Thus in 1633, the company of New France reentered upon all its former rights. Champlain as head of the French colony built up the settle-

²⁵ Isambert, XVI, 221-222.

²⁶ *Mercure François*, XIV, 61, 232-240. Gives a complete account of the colony including a discussion of its control by means of a board of directors, etc.

²⁷ Caillet, 342-345, Dumont J. *Corps Universel Diplomatique du Droit des Gens*, 8 vols., Supplement, 5 vols. Amst., et La Haye, (1726-1739), VI, pt. I, 31-32

ment and companies to a degree never before attained. In 1640, Montreal was founded and a fort called Fort Richelieu was established just above where Quebec is at present, so that, by the time of Richelieu's death, the French possessions in North America had a good start, and it was not due to any direct fault of his that they failed in the end.

One writer, in accounting for the decline of the colonies, places the blame on the cupidity of the merchants, who neglected agriculture for a selfishly conducted fur trade. Furthermore, religious influences had a tendency to injure the economic development of the colonies. Too much emphasis was placed on religion to the neglect of agriculture.²⁸ The competition of the English and Dutch for the Indian trade, and of the governors and the colonists, coupled with increasing neglect of the colonies by the home government, after Richelieu's time, all tended to ruin the bright future of the French possessions in America. Indeed, one cannot explain the failure of French colonial policy at this time as being due to Richelieu's centralized system of settlements. There are too many other incidents which go to make up a logical account of its non-success.

No better example of the difficulties confronting the Cardinal with relation to foreign opposition is to be found than in his efforts to secure a foothold in the West Indies and South America. A company of the Antilles was formed in spite of the opposition of Spain and Portugal, who claimed sole command of the seas surrounding that particular part of the world. The question of the freedom of the sea then came up for the first time in French history when France in company with Holland (the famous work of Grotius, *Mare Liberum*, appeared in 1608) affirmed with energy that doctrine. Thus began the conflict between interests and doctrines which continues up to the present time. In this particular case, the conflict prevented France from doing anything in a colonial way, either in South America or the West Indies. In 1625, the French and English established a colony on the island of "Saint-Kitts" which was destroyed by the Spanish, and revived by the French later on.²⁹

²⁸ Pigeonneau, II, 430-431. He defends Richelieu's policy in excluding the Protestants from colonies because of their constant efforts to form alliances with the enemies of France.

²⁹ Pigeonneau, II, 434-435; Isambert, XVI, 421, 540-551.

Other islands as Guadeloupe, Martinique, Dominique, etc., were occupied by the French. A settlement was made even in Guiana. "Indeed," says one writer, "the French in their settlements in the West Indies, gave proof of brilliant qualities, perseverance, and initiative never exhibited before."³⁰ But the important thing to notice is the fact that French and Spanish colonial interests were conflicting very sharply during the Thirty Years' War, and this economic rivalry must certainly have had more or less influence on the diplomatic relations between the two countries. France was striving for a world colonial empire during Richelieu's administration.

About the time the French were colonizing America, they were also undertaking the task of assuming close relations with the Orient. Missionaries were the means by which their efforts were to be made successful. The famous Father Joseph was named by the Pope in 1625, director of missions in the Levant; and that nomination, together with the office of "grand master of navigation, etc.," acquired by Richelieu about the same time, is direct evidence as to their aims in regard to colonial and commercial expansion. Of course religion was the prime motive of this movement in Asia, but it is interesting to note that the French Jesuits sent into China, Japan, Persia, etc., were also diplomatic agents of the government.³¹

The first society to trade in the East Indies was formed by Henry IV in 1604, with exclusive rights for fifteen years. It had the port of Brest and was otherwise favored by the government. The jealousy of other nations prevented this company from buying the necessary equipment from them. Thus it did not really start at all. Letters patent, however, in 1615, gave the company a new lease of life, and brave adventurers from Dieppe visited the East Indies and Madagascar.³² Finally in 1642, Richelieu granted several individuals exclusive privileges in the East Indies for ten years. So it is quite evident that France definitely began her East India policy at this time.

Settlements were established even in Africa. Senegal especially attracted the attention of the French. In 1621-1626 a colony was formed, which was under the protection of the Cardinal

³⁰ Pigeonneau, II, 439-440.

³¹ Deschamps, 102-105.

³² Isambert, XVI, 78-82.

and which had as its purpose the colonization of the land in that territory.³³ To carry this out, Richelieu even sent Admiral de Razilly with a squadron to aid in the work, but it was of no avail, for the company had to be replaced in 1633 by a new one composed of the merchants of Rouen and Dieppe, who obtained permission to trade for ten years at Cape Verde and upon the rivers in Senegal. Various other similar organizations were formed, but nothing of especial importance can be obtained from a study of French colonization in Africa at this time, except that a foundation for French influence in that continent was laid, which might have amounted to more than it did, and only recently has been utilized.

One colony, established on the island of Madagascar, seems to have been more or less permanent. Many attempts had been made during the reign of Henry IV and during the first year of the rule of Louis XIII, to found settlements on this and neighboring islands. There was another purpose in the establishment of a colony here besides mere colonization, namely, that the French intended to use this possession as a base or half-way house, for their trade with the East Indies. On March 2, 1611, Louis XIII granted permits to several men which gave to them the exclusive right to settle these lands and begin trade. They had besides a monopoly in all commerce carried on with the East Indies for the next twelve years. But as they made no use of that privilege, the merchants of Rouen resolved to take it away from them. They offered to carry on that trade and develop it to the fullest extent, as they had the facilities to do if they had the chance.³⁴ The first company, however, opposed any interference with their rights, and claimed that they were doing the best they could, considering the obstacles which were erected by the foreign neighbors of France. As a result of all this, the various companies and claimants of their rights were united by the government into one concern.

The grant establishing this united organization stated that its members should undertake the navigation of the West Indies, maintain its protection and enjoy its privileges. The fleet of Montmorency was to defend all the subjects of the King, as well as the interests of the company, and to undertake any

³³ Caillet, 352-358.

³⁴ *Ibid.*, 353-355.

necessary trips from the coast to the Cape of Good Hope during this space of twelve years, in order to aid commerce. In spite of this liberal charter and the various attempts made to settle the East Indies, the plan failed in 1620, because of the pressure of the Dutch in that part of the world.

Finally, the company decided to place a colony on the island of Madagascar, in the hope that if they could found a powerful settlement there, it would serve to aid in further expeditions to the Indies. So they went back to the original plan which had been changed when the different colonizing organizations had been united. However, internal disturbances in France, which took place in 1631, prevented them from carrying out this plan.

In 1638, another attempt was made by a man from Rouen to found a colony in Madagascar, and he left a very interesting account of a voyage to that island.³⁵ Finally, a new company was formed January 24, 1642, which obtained from the Cardinal the exclusive privilege of sending into the island of Madagascar and other adjacent islands the members of the organization, to establish colonies and take possession in the name of the King.³⁶ As a result, in the month of May a ship was sent to the islands, and they took formal possession. Thus Madagascar was at last a real possession of France and a way was prepared for further settlement. This was the final colonizing project started by Richelieu.

What were the general results of all the efforts of the Cardinal and his co-workers along this line? "Geographical knowledge was extended if nothing else," says one writer in relating the results of the colonial efforts of France during this period. "Richelieu himself," he says "aided a man named Sanson to found a geographical school at that time."³⁷ But there were other gains more important than these, especially on the economic side, for which the Cardinal merits considerable praise.

When one looks over the field of the colonial activities undertaken during Richelieu's time, he must conclude that very little had been accomplished on the material side. It seems that all the efforts of the Cardinal were in vain, and while Holland,

³⁵ Caillet, 355-357.

³⁶ *Ibid.*, 357-358.

³⁷ *Ibid.*, 358.

England, and Spain were forging ahead in their colonial development and commercial activities, France was doing scarcely anything along these lines. But the Cardinal deserves great credit for the part he played in the colonial development of France. In spite of many internal troubles, such as the relations of the government and nobles, and his complicated foreign policies, he was always interested in planting new French settlements on great unoccupied continents, and he aided in the different colonization enterprises not only during the first part of his rule, but up to the very last. He at least laid the foundation of the French colonial policy.

Finally, one must not forget that this great man died before he could carry out his ideas as regards this part of his administration. His *Testament Politique* clearly indicates that he realized the advantage of colonial development as keenly as French statesmen did just before the recent great war.³⁸ Furthermore, he looked ahead and foresaw the future rivalry with England upon the sea. It is indeed unfortunate for France that he could not have lived to see the dawn of peace in Europe, so that he could have carried out his entire economic program, of which the formation of colonies was one important part.

A number of writers criticize Richelieu's colonial policy, not without justice. But they do not look at it with reference to the other difficulties confronting the Cardinal at that time. Masson thought that it was entirely too centralized, and d'Avenel, referring to one of his edicts concerning the formation of a colonial company, says, "that it is a source of profound astonishment to me to see a mind as clear and practical as Richelieu's in diplomatic and military organization, attempt to carry out his dreams of that most peculiar economic despotism which modern people call state socialism." But to Richelieu, colonization was a state affair. "The edict of Morbihan is one which all France seeks," says the Cardinal, "whose execution is alone capable of putting the Kingdom in a state of splendor. The proclamation," he continues, "alarms already the English and the Dutch, who fear that he will make himself master of the sea. Spain is afraid of us also, for she fears the loss of her Indian possessions."³⁹ This would indicate that Richelieu saw the

³⁸ Richelieu, *Testament Politique*, II, 64-80.

³⁹ D'Avenel, *Monarchie Absolue*, III, 208-217.

colonial struggles that lay ahead; and wished to prepare for them in the best possible way. Since individual capital to found colonies was lacking, support by the government seemed to him to be the only logical way, in spite of the fact that colonization is essentially due to individual effort rather than royal plans.

It was not the general economic policy of the Cardinal relating to this branch of his administration which was at fault, "but", says one writer, "it was marred by the practice, common to all statesmen of the day, of intrusting colonial enterprises entirely to exclusive companies. These corporations, by which privileged individuals were protected at the general expense of the body of consumers, were extremely unsuccessful in French hands, partly through their excessive dependence upon the state parentage and control, and partly through their total neglect of agriculture, and the consequent failure to form permanent and prosperous French settlements."⁴⁰ In short, the failure of the French colonies can be laid to, (1) artificial imitation, (2) religious narrowness, (3) too much aid from the state, and not enough emphasis upon commerce and colonization. Furthermore, the companies themselves are to blame to a certain extent for the weak colonial policy of France, because of (1) bad administrative direction, (2) premature distribution of dividends, (3) lack of capital and credit, (4) bad economic organizations.

In view of the numerous difficulties confronting Richelieu in this phase of his administration one wonders that he accomplished what he did.⁴¹ The very fact that the French people were unprepared for colonial efforts, the numerous internal troubles, financial and industrial for instance, as well as Richelieu's involved foreign policies, indicate the magnitude of the task which the Cardinal confronted. Yet Richelieu's thoughts were constantly turned toward this field of activity. Whenever there was a lull in political and internal affairs, or when he was offered any favorable opportunity, he did his best to found successful colonies in the new lands.

⁴⁰ Lodge, R., *Richelieu*, London, 1896, 173

⁴¹ Seeley explains the loss of French colonies as due to (1) strict regulations, (2) loss of population in war, (3) expulsion of Huguenots, (4) too many wars. See Seeley, J. R., *The Expansion of England*, London, 1891, 79, 110.

He even tried to work up an interest in colonies by means of inspiring accounts concerning them, published in his *Mercurie François*.⁴² Public opinion was aroused, as is illustrated by the numerous publications made at this time concerning the colonies.⁴³ A few years of peace might have brought about a great change in the colonial position of France. But it is only within the last century that France has been able to do anything in regard to colonization. And thus the general policies of Richelieu have been revived at the present day, and so are doubly important as constituting a force which is now continuing. That Richelieu deserves more credit than he has obtained for his work in behalf of French colonization, that whatever weaknesses existed in his charters granted to colonists were of minor importance, and finally, that the foundation laid by this man which would have resulted in the erection of a strong and powerful imperial edifice was ruined by the ineptitude of the French people and the faults of those who came after him, are the main conclusions to be drawn from a study of this phase of his career.

⁴² Deschamps, 129-130.

⁴³ *Ibid.*, 103-115.

CHAPTER IX

RICHELIEU AND THE DEVELOPMENT OF FOREIGN COMMERCE

Richelieu came to power at a time when foreign commerce was in its infancy and the world was just beginning to awake to its importance. "To Richelieu as well as Cromwell and other great people of his time," says Bridges, "war and foreign conquest were no longer the primary occupations of rulers. When they engaged in it they saw, dimly indeed, and inconsequently, but still they saw, the two grand tendencies of the modern world; peaceful industry in the temporal sphere and morality based upon unfettered thoughts in the spiritual."¹

The Cardinal's appointment as "grand master and general superintendent of navigation and commerce," in 1626, placed him at the head of not only the marine but also of internal and external commerce.² He, at this time, made the assembly of notables understand not only that he was in control of commerce but that he was going to develop it and enrich his people and state thereby.³ Thus, at the beginning of his administration, he decided to do all he could in his official capacity to develop a great trade for France. This intention is remarkable when one considers the other problems which then confronted him.

In 1626, as mentioned before,⁴ the *Code Michaud* was introduced. Richelieu, although an enemy of Michaud, accepted most of these ordinances, one fifth of which dealt with commerce. In this code the manufacturers of silk were to be encouraged by forbidding the importation of foreign goods. Exportations should be aided and companies of commerce should be established

¹ *France under Richelieu and Colbert*, 63.

² *Isambert*, XVI, 194-197.

³ *Mercure François*, XII, 759-761.

⁴ See Chapter VII, 100.

and encouraged. Nobles were to retain their rank if they engaged in commerce, and, as mentioned before, the privilege of nobility could be conferred on traders under certain conditions.⁵ Indeed, Richelieu in trying to carry out these ordinances, really prepared the way for a great expansion of French commerce, which would no doubt have taken place except for internal and external wars.

He encountered many difficulties in his attempts to develop commerce. In the first place, such nations as England, Holland, and Spain were far ahead of France in this phase of a nation's strength.⁶ The English even required all French goods to be sent to England in English vessels. On the other hand the Dutch seemed to carry all the French trade with the northern countries.⁷ In the Levant alone the French flag dominated the carriage of commerce. But this supremacy also was endangered by England and Holland.

Therefore in order to aid French development of foreign commerce certain laws such as that which laid a duty on foreign vessels, or such as that which prohibited the exportation of wool and the importation of cloths, were passed.⁸ These mercantilistic changes had a tendency to aid not only in the development of manufactures in France but also in the growth of French commerce.⁹ The creation of a large marine of course was another important factor in the solution of the problem of commercial growth.

In his efforts to build up commerce, however, the Cardinal had internal as well as external troubles. For example, numerous towns and provinces with ancient privileges objected to his efforts to build vessels in their ports. "Les Messieurs de Saint-Malo" refused to allow the King to construct some vessels in their harbors, as it was contrary to the franchises, they said.¹⁰ The Cardinal showed them that it was to the interest of their trade to do so and promised further to enlarge their franchises. He concluded by saying that he was working for the interests of French commerce, which was necessary to make

⁵ See chapters VII and VIII; Isambert, XVI, 273-278.

⁶ Gouraud, I, 157-188.

⁷ Pigeonneau, II, 406-407.

⁸ Sourdis, III, 171-174.

⁹ Beaurepaire, III, 270-277.

¹⁰ Montchrétien, Introduction, XC-XCVI.

France strong and flourishing.¹¹ Richelieu was perfectly willing to aid local cities by subjecting foreign traders and goods to high import duties, etc., but he would not permit them to establish independent marines.¹² Thus developed an interesting economic struggle between local privileges and the growing spirit of centralization.

The problems of Richelieu were indeed intricate. Contrary to the demands of Rouen, the city of Marseilles complained to Richelieu not only of heavy impositions laid upon them, and slight protection afforded them, but also of the lack of protection and aid to foreigners whose trade they desired. In other words, while both Rouen and Marseilles wanted instant efforts to be made to repress piracy, the former desired the foreigners in France to be repressed while the latter wanted encouragement to be offered to foreign commerce.¹³ The only thing he could do was to consider the interest of the nation as a whole and adjust his policy toward individual cities accordingly.

Now the Cardinal did not neglect the commercial problems in France. He sent, for example, M. de Lauson, who was employed by him in a high position in affairs of commerce and of the colonies, to investigate commercial conditions, and had him return to consult concerning remedies which would aid both the King and his subjects.¹⁴ As a result he attempted to bring about better conditions with respect to both consuls and other officials connected with commerce, and to foreign relations.¹⁵ He even went so far as to send instructions with regard to the destinations of cargoes, etc., of French convoys.¹⁶ At another time, in 1627, he wrote a letter asking M. A. M. de Baugy for a report on the condition of commerce. He assures him that merchants shall be given all reasonable privileges and aid.¹⁷ In compliance with these promises he tried in 1627 to establish a company of merchants in the capital city of each province, for the purpose of promoting navigation, and to give them special privileges. This was done with the main purpose of building up

¹¹ Richelieu, *Letters*, II, 381.

¹² Deschamps, 135.

¹³ *Ibid.*, 136-137.

¹⁴ Richelieu, *Lettres*, II, 345.

¹⁵ *Mercure François*, XII, 782-784.

¹⁶ Richelieu, *Lettres*, II, 504-506.

¹⁷ *Ibid.*, II, 380.

trade. One can find many other letters which illustrate his solicitude for the state of commerce.¹⁸

Dominated by this view, Richelieu had a more or less definite commercial foreign policy which affected all the important nations of the world. This was especially true with respect to Spain. Richelieu hoped that he might be able to develop the army, make France strong upon the sea, and thus be able to dominate Spain in commercial relations.¹⁹ During the first part of his administration, Spain imposed various restrictions upon French trade, but would not permit France to act similarly towards Spanish commerce. It is significant that Spain not only dominated commercial relations between the two countries, but also between her colonies, and between Portugal and France.²⁰ Richelieu then decided in retaliation, to prevent all trade with Spain, and in 1625 issued a declaration to that effect.²¹ However, the fact that Holland and England were competing for French trade in Spain accounts for the Cardinal's never absolutely cutting off commerce between the two nations. He knew that if Spain could be defeated in the Thirty Years' War, commercial relations with her could be easily settled to the advantage of France. Therefore, rather than lose out during the period of war, he permitted trade between the nations, which of course was of mutual benefit. He was sure that Spain, "whose sole wealth depended on the gold from her colonies," was on the decline, and that time would make France her superior and dictator in commercial as well as in colonial relations.²²

Turning to England, one finds that Richelieu appreciated the importance of that country as a commercial nation.²³ Her resources, manufactures, and trade were all elements contributing to her grandeur and made her a direct competitor of France. Just like Spain, England restricted French commerce in her direction and opposed similar treatment in France. As will

¹⁸ Richelieu, *Lettres*, III, 171-173; 178-179.

¹⁹ Richelieu, *Mémoires*, XXIII, 261-262.

²⁰ Levasseur, I, 265.

²¹ Isambert, XVI, 148.

²² Richelieu, *Mémoires*, XXII, 39; XXIII, 257-258; Sourdis, I, Introduction, III-VII.

²³ Richelieu, *Testament Politique*, II, 49-52.

be shown later, Richelieu's diplomacy, to a large extent, was centered around his attempt to obtain a just recognition of the commercial rights of France by England, and also a claim for equality on the seas.²⁴ Of course he had to temper these demands, because of his desire to retain the British as an ally against the Hapsburgs. Nevertheless, he recognized the fact that French commerce needed protection on the seas and should have it.

During the Huguenot affair, commerce with England was prohibited.²⁵ Richelieu at that time was really afraid of an alliance of England, Spain, Holland, and Savoy against France.²⁶ It was not long, however, before efforts were made to bring about an alliance between the two countries, which resulted in the treaties of 1629 and 1632, whereby friendly commercial relations with England were restored, much to the credit of Richelieu, who even wanted to establish certain rules of the seas which would govern commercial relations in the future.²⁷

After 1632 Richelieu relaxed his efforts to settle critical commercial questions, as he knew that the Thirty Years' War prevented any such action on his part. On the whole, therefore, commerce between the two nations went on as usual. Most of the trade was in English boats, and the English continued to annoy the French merchant who came to trade at London, by taxes, formalities, etc.²⁸ France had to become stronger on the seas before she could settle commercial relations with her rival.

Richelieu was well aware of the power of Holland, and was a strong admirer of her commercial success. It was between the years 1610 and 1625, that Holland assumed a strong position on the seas, in the colonies, etc. She became at that time the great economic rival of England. In a commercial way, trade with Holland was kept up and fostered during the administration of Richelieu. That country was the diplomatic ally of France against the Hapsburgs, so that he was unable to undertake any economic action against her except to injure her trade with Spain through France, by means of ordinances. Political and

²⁴ See Chapter XIII; Beaurepaire, II, 84-85, 166-7; Richelieu, *Lettres*, II, 490.

²⁵ Richelieu, *Lettres*, II, 774; Dumont, V, pt. 2, 506-507.

²⁶ Richelieu, *Mémoires*, XXIII, 335.

²⁷ See Chapter XIII, *Lettres*, VII, 676; Dumont, V, pt. 2, 581.

²⁸ Levasseur, I, 264.

economic necessity elsewhere prevented a direct economic connection between these two lands, although two treaties in 1624 and 1627, arranged a more or less clear basis of friendly economic relationship with regard to the seas and colonies.²⁹

It is in a study of French commerce in the Levant that one can obtain the best illustration of the real economic rivalries of Holland, England, and Spain with France. Since the death of Henry IV, the former important commercial relations between France and Turkey had diminished, while the influence of Holland and England in Turkey had increased. Centralization of the government of France took away the extensive commercial powers of individual cities. But even this change, up to Richelieu's time, had not aided commerce with the Levant. When he came into office he encountered a chaotic condition in this trade. The conflicting efforts of the central government and the cities seemed to be making matters worse. "It needed a man," says one writer, "with a definite policy, as Richelieu had to make an effort to create a positive reform."³⁰ Trade with the East had been neglected, and it was his task to restore it.

In the first place, he had to overcome the influence of the English, Dutch, and others in Turkey. They were paying 3% import duty while France paid 5%. The Porte favored the former powers. Inferior business methods and goods had lost for France the cloth trade with the East in return for spices, and was ruining the general commercial chances of the French in that quarter of the globe.³¹ Nevertheless, in spite of this competition, France until 1635 had an important trade with the Levant. Active entrance into the Thirty Years' War at that time injured this commerce in that the Spanish ships and the pirates hindered navigation, while cessation of trade with Spain cut off the supply of gold, which France had been accustomed to send into the East. The lack of money in turn accounts for the resumption of commercial relations with Spain in 1639.³² One step towards a revival of eastern commerce would be attained, however, if Spain could be defeated, and Richelieu realized that fact.³³ Spain's de-

²⁹ See Chapter X, Levasseur, I, 266. Dumont, V, pt. 2, 461-462, 523.

³⁰ Masson, *Histoire du Commerce Française dans le Levant*, 105-109.

³¹ *Ibid.*, 118-119.

³² *Ibid.*, 119-135.

³³ Richelieu, *Testament Politique*, II, 55-56; 71.

feat would have removed the greatest naval and colonial rival of France in the Mediterranean.

"Richelieu has been accused of neglecting the Levant in the interest of more distant colonies," says one writer. "This is not true. The Cardinal understood better than his councillors the value of commerce in the East, and was not the man to let himself be carried away with the dreams of another crusade there, which seduced the imagination of Father Joseph."³⁴ He goes on to indicate that the elements which caused the deplorable weakness of France in the East, were the presence of pirates, poor conduct of diplomatic relations, inferior quality of merchandise, and bad organization of the consulates and their unfortunate conduct. All of these defects Richelieu tried to remedy. He furthermore encountered the war between Persia and Turkey which made matters even more difficult. But he attempted to trade with the former country by arranging a treaty with the northern countries whereby goods could be sent through Russia and the Baltic.³⁵ This plan did not succeed because Russia would not permit French caravans to go through her lands.³⁶

Father Joseph, at last rid of his crusading dream, was sent to the East. He founded religious establishments in Jerusalem, Alexandria, Bagdad, etc. As a result, commerce was permitted to grow up under the wing of the church. Richelieu had other men study the routes and conditions of commerce in central Asia and the Orient, and they succeeded in writing and bringing back vivid accounts.³⁷

The Cardinal knew that the influence of France depended on the capitulations made with the Sultan. In 1631 he sent an ambassador to Constantinople to renew the capitulations, "with the very high, very excellent, very powerful, very invincible Prince, the grand Emperor of the Musselmans, in order to conserve and extend the friendship and union of the crown of France and the Ottoman Empire for trade, traffic, and com-

³⁴ Pigeonneau, II, 443-444.

³⁵ See 166.

³⁶ Pigeonneau, II, 445-446.

³⁷ *Ibid.*, 448-449. The best known of these men sent by Richelieu was Jean Baptiste Tavernier, who was not only a traveler but a merchant as well, who founded French commerce in Persia, in India, etc. Besides visiting Turkey in Asia, Persia, and India, he went as far as Sumatra and Java.

merce with our subjects.³⁸ But he was at no time very successful in his commercial efforts in the East.

In 1633, a committee of dignitaries, nominated by the council of Marseilles (a city very much interested in eastern commerce) on the basis of their commercial knowledge, reported and complained concerning the decay of eastern trade, which they said was due to many causes. They cited the long and important European wars, piracy, the oppression of ministers of the "Grand Seigneur," corruption of officials in the Levant, and of traders, etc. In fact, they complained that the entire commercial system of France in the East was debased.³⁹ To rebuild the trade of the Levant was a difficult proposition, but Richelieu did the best he could under the circumstances.

In 1639 he sent a new ambassador to Constantinople with instructions not only to protect Christians there, but to aid the French in developing commerce by seeing that the capitulations were obeyed. He was to see that all nations which had no ambassadors in the East should sail their ships under the French flag and recognize the French consuls. He was also to investigate the heavy impositions levied on the French merchants at Aleppo and Alexandria by the natives. If there was no remedy the trade would be ruined, or henceforth be carried by the Venetians and English.⁴⁰ The Cardinal thus made direct efforts to strengthen and rectify matters in the East. He even went so far as to give advice with regard to the injury caused by debts contracted by past ambassadors. They should be settled at once in the interest of French trade as a whole.

In spite of his difficulties, the Cardinal up to the very last recognized the value of eastern commerce.⁴¹ "I will not enter," he says, "into detail at all as to the commerce which can be carried on with the East and Persia, because the humor or caprice of the Frenchman is so quick, that he wishes the end of his desires almost as soon as he has conceived of them, and

³⁸ Richelieu, *Lettres*, II, 23-24; IV, 106; *Mercure François*, XVII, 815-817.

³⁹ Deschamps, 135-136.

⁴⁰ Richelieu, *Lettres*, VI, 320-322.

⁴¹ Richelieu in his efforts to develop commerce gladly accepted helpful advice from others. See Pigeonneau, II, 383.

the voyages that are distant are not agreeable to their natures.”⁴² It is interesting to notice that Richelieu was keen enough to see and admit the colonial weakness of the French. History was to bear out the truth of his remarks. “However, as there comes,” he says, “a great quantity of silk and tapestry from Persia, many curiosities from China, as well as spices from there and other parts of that section of the world, which are useful to us, therefore this trade must not be neglected. In order to make a good establishment there, it is necessary to send two or three vessels commanded by some persons of quality, prudence, and wisdom, with patents and necessary powers, to treat with the Princes and make alliances with the people on all the coasts, just as the Portuguese, English, and Flemish have done. This policy works better than forcing one’s way into a country, and holding it down by force, and thus stirring up hate by deceiving them, as others have done.” It is quite evident that Richelieu desired close commercial relations with the East, and the fact that he did not aim to accomplish that by military force seems to indicate his keen power of observation. He knew that he could attain the best results by peaceful treaties in the East and acted on the basis of that knowledge.

He even went so far as to list the merchandise involved in trade with Naples, Rome, Smyrna, Constantinople, etc. Money and merchandise were exported from France in return for the silks, wax, leather, spices, drugs, etc., of the East. “Before the English and Dutch settled in the Indies,” he says, “all silks, drugs, and other merchandises of Persia came to Aleppo, from whence they were sent throughout France, Holland, England, and Germany.”⁴³ It is the loss of the monopoly of eastern trade which Richelieu bemoaned and desired to regain. “Now the very same English and Dutch,” he says, “have taken away our commerce, and deprived France not only of the merchandise of Persia, but also are encroaching on the land of the ‘Grand Seigneur,’ which they have to go through. The merchandise is then sold in Sicily, Naples, Genoa, Germany, etc.”⁴⁴ Furthermore, he points out the fact, that the English and Dutch were getting spices and drugs directly from the

⁴² Richelieu, *Testament Politique*, II, 70-71.

⁴³ *Ibid.*, II, 72-73.

⁴⁴ *Ibid.*, II, 73-74.

Indies, and thus were gradually obtaining control of the sale of these goods.

Richelieu regretted this state of affairs. He feared that foreigners would even control the trade of the East with France, and thus his nation would lose the profit to be obtained thereby. He points out in his *Testament*, that the French took more hemp, cloth, wood, etc., to the East than they did money. Furthermore, what money they did send was obtained from Spain in exchange for merchandise sold to them. That France would profit by a renewed trade he had no doubt, and pointed out Marseilles as a city which had made considerable money in the past by means of the eastern commerce.

One would think the attention given the advisability of the retention of money in France, would classify him as an extreme mercantilist. Such was not the case. "I admit," he says, "that I have for a long time been deceived as to the commerce which the people of Provence founded in the East. I believed with many others that it was prejudicial to the state, founded upon the common opinion that it exhausted the money of the Kingdom, in order to bring back merchandise, not necessary at all, but only useful for the ease of our nation. But after having taken an exact view of this trade, condemned by the public voice, I have changed my mind, and if any one will examine the question, he will see certainly, that I have done so with thought and reasoning. It is certain that we could not do without most of the merchandise which is obtained from the East, as silks, cottons, wax, rhubarb, and many other drugs which are necessary to us."⁴⁵

This is one of the wisest economic utterances of the Cardinal. It might well mark a gradual change from the strict mercantilistic view, to a very liberal, if not modern one. Believing in the great value of a retention of money in France, he changed about, and toward the last recognized the fact that after all it was the export of goods which other countries desired and the import of goods needed by France, which counted. He could see that by this means France could develop better than under the narrow policy of the past. It is unfortunate that he did not live long enough to carry into execution these new economic ideas which he conceived toward the end of his administration.

⁴⁵ Richelieu, *Testament Politique*, II, 75; *Mercure François*, XXIII, 390-393.

Richelieu was not concerned with the commerce alone between France and the East. He desired France to be a distributing point and a manufacturing center for the products of the East, by which it could make 100% profit. In this way France could be assured of a great number of artisans and sailors, both useful in peace and war, and of revenues from export and import duties. In order that the French merchant could appreciate and be stimulated to develop commerce in the East, the Cardinal even advocated the sale of government vessels to be used by the French in commerce.⁴⁶

Furthermore, he desired to make the Mediterranean a French lake. This is best illustrated by his efforts to settle not only the question of piracy but also his attempts to arrange commercial relations with Algiers, Tunis, Morocco, etc., in North Africa. A representative named Sanson Napolon was sent to Algiers and obtained in 1628 a treaty which stipulated observation of all the articles of the capitulation between them. Trade and fishing rights were adjusted and things looked bright again in that part of the world.⁴⁷

In 1630, Isaac de Razilly was sent to settle the difficulties, and he succeeded in obtaining the right of the French to trade freely, and have consuls in that country.⁴⁸ Furthermore, the English were forbidden by this treaty to send arms to Morocco.⁴⁹ By these agreements the privileges of the French in North Africa and on the sea, and the rights of the natives of these countries to trade with France were confirmed. On the whole the relations with the Barbary States were improved. There was, however, a little trouble in 1633, and another treaty was necessary in 1639. In fact one might say, that in Africa as well as in France and America, Richelieu's work was incomplete. He had ambitious plans for the development of the entire Mediterranean, but did not live long enough for any part of them to materialize.⁵⁰

Richelieu did not confine his attentions only to the East in his effort to develop foreign commerce. One finds for instance, that he desired to sell to the Swiss, French salt, which

⁴⁶ Richelieu, *Testament Politique*, II, 76-77.

⁴⁷ Lavasseur, I, 266-267; Dumont, V, pt. 2, 559-560.

⁴⁸ Isambert, XVI, 357-359.

⁴⁹ *Mercure François*, XVII, pt. II, 181; Dumont, V, pt. 2, 613-614.

⁵⁰ Pigeonneau, II, 453-455; Dumont, VI, pt. I, 18.

was better than German salt, and at a more reasonable price. He hoped by this means to pay the pensions due the Swiss soldiers.⁵¹ Indeed it would seem as if the Cardinal was planning on using the salt resources of France as one of its financial foundations. No wonder he did not want to lose La Rochelle.

With regard to Poland, Richelieu made an interesting remark. He said in 1629, that France had little trade with Poland because the former had no need of wheat or wood, which could be obtained in nearer markets, in Norway and Denmark. Furthermore, she could get tar from Norway and leather from Sweden, so that trade with that country was not really important.⁵² However, Richelieu admitted that the Austrians dominated Poland at that time, which may account to a certain degree for his attitude toward the latter. He declared that France furnished Poland some salt and wine, which the Dutch really controlled. "Our more important trade is in Spain, Italy, and the Levant. England might better desire peace in Poland because of her great trade with that nation."⁵³ Here one sees a clever effort on Richelieu's part to push England into the conflict in 1630 because of commercial interests in the north. The Cardinal evidently recognized the powerful influence of trade in diplomatic relations.⁵⁴

Richelieu did not get all that he wanted in Russia. Full commercial rights were obtained, but the French were not to be allowed to go through there on their way to Persia. Russia was to furnish such a good market for France that they could get the goods from the East as cheaply as if they went after the merchandise themselves. It certainly is interesting to notice that the original plan of founding a commercial company in France, which was to trade with Russia, and which included a plan to bring Persian goods by means of the Caspian Sea, the Volga river, and the Baltic Sea to France, culminated in the first real commercial treaty made by the French nation with Russia.⁵⁵ Richelieu was looking out for French commerce and in 1630 he believed that the Baltic Sea was to be the way by

⁵¹ Richelieu, *Mémoires*, XXIII, 289-290.

⁵² *Ibid.*, XXV, 129.

⁵³ *Ibid.*, XXV, 129.

⁵⁴ For further information, see Chapter X.

⁵⁵ Richelieu, *Mémoires*, XXV, 131; Dumont, V, pt. 2, 594-598.

which he could trade not only with the north but with the East.⁵⁶ One can see why he was so anxious to arrange treaties with the Scandinavian countries. Also, the effect upon France if Austria had controlled the Baltic must have been obvious to Richelieu. It is no wonder that he founded the alliance against the Hapsburgs and fought his fellow Catholics at a time when the religious controversy still had its place in affairs of the world.⁵⁷

Richelieu desired not only to open up trade with the East through the Baltic, but he also wished to increase the commerce of France with such countries as Denmark, Norway and Sweden. In the treaty of 1629 arranged with Denmark, the latter was promised pure salt from France instead of the impure product the Dutch sold to them. France would have also a better market for the purchase of such things as hemp, masts for boats, etc., which she needed.⁵⁸ A treaty also was arranged which permitted French merchandise to go through the Straits (the Sund) with a tax of 1 per cent instead of the 5 per cent hitherto levied. This arrangement was limited to eight years.⁵⁹ A commercial treaty was also negotiated with Sweden. In it an alliance was agreed upon which was to last six years, and in compliance with it they agreed to defend oppressed friends, to assure freedom of commerce from the north to the Baltic, etc.⁶⁰

France during this period was interested in the Baltic not only for diplomatic reasons or on account of the fear of the growing Hapsburg dynasty, but she also desired to assume more friendly and important commercial relations with the northern countries. It is possible that the alliances were fostered partly to bind the nations more closely together against a common foe. They were likewise probably brought about in order to

⁵⁶ This is especially interesting when one remembers that the Spanish Hapsburgs by means of their control of the Portuguese were developing the route around Africa.

⁵⁷ See Chapter X.

⁵⁸ Caillet, 328-332. (*Les Voyages de Monsieur des Hayes, baron de Courmesmin en Denmark, 1669*, p. 99 et seq.)

⁵⁹ With reference to the Danish treaty, Richelieu has this to say, "It was a great advantage to the commerce and navigation of France." See his *Mémoires*, XXV, 342-343.

⁶⁰ Martin, II, 316.

obtain an advantage over the competition of at least Holland in this particular part of the world, and to establish a new commercial route to the East. Whatever were the motives, Richelieu was the instigator of this policy and thus deserves the credit for what he accomplished along these lines. It will be shown later that his accomplishments here had important consequences in the progress and outcome of the Thirty Years' War.⁶¹

But it is in Richelieu's *Testament Politique*, that one finds his final ideas with regard to commerce in general. He repeats (and seems fond of doing so) the story of the commercial rise of Holland. "It is proof," he says, "of the utility of trade. Though that nation produces nothing but butter and cheese, yet they furnish all the nations of Europe with the greatest part of what is necessary to them."⁶² He then proceeded to tell how they had ousted the Portuguese from the East Indies and were preparing to do the same in the West Indies. One can not fail to see the yearning in the heart of the great statesman for a similar growth on the part of France. He realized that if this could only take place, France with its geographical and economic advantages could become the leader of Europe. After all the economic side of a nation constituted the foundation of its strength and all his attempts at political centralization were for the purpose of bringing about a successful culmination of his "ideal state." France is so fertile in corn, so abounding in wine, flax, hemp to make cloth and riggings, so necessary for navigation, that Spain, England, and all the neighboring states must have recourse thither," he says, "and provided we know how to improve the advantages which nature has given us we will get the money of those who have occasions for our goods, without troubling ourselves much with their commodities which are of little use to us."⁶³ He knew that his country was being exploited by the commercial progress of other nations, and that if she found herself, she could not only develop her commerce and fisheries, necessary at that time, but she also would be able to keep her sailors at home, who up until then had sought employment in Spain.

The development of French industries, French commerce,

⁶¹ See Chapter X.

⁶² Richelieu, *Testament Politique*, II, 65.

⁶³ *Ibid.*, II, 66-67.

and French wealth was the underlying foundation of his philosophy. "Instead of importing cloth from Spain, England and Holland, let us make it ourselves," was his earnest demand.⁶⁴ "France is industrious enough, if she desires, to dispense with some of the best manufactures of her neighbors."⁶⁵ He then goes on to praise the plush made at Tours, as ahead of that made in Italy and Spain. France could make as good silk as any nation, was his boast. It would seem as if he indulged a typical "made in France" argument, such as is not out of fashion at the present time. Efficiency was his motto. He could see in the revival of commerce and industry, a chance whereby everybody could have an opportunity to work, so that sloth, laziness, and an extreme desire for luxuries would be overcome. A man who advocated the use of the entire material and human resources of the country in order to create a wealthy and strong state is certainly not to be classed as mediocre either in the political or the economic sense of the term.

No one can doubt that he possessed keen business ability. "There are many advantages in navigation," he says: "The fur trade of Canada is very useful, as you can carry on an exchange of goods for goods."⁶⁶ He points out the advantages of commerce in the East Indies and in North Africa. "The merchants of Rouen," he says, "at one time established a silk and cloth trade in Morocco by means of which they obtain a great quantity of gold." He bemoans the lack of a great merchant marine which could carry all the traffic of the north which the Flemish and the Dutch had taken over because the north had an absolute need of wine, vinegar, spirits, etc., all commodities in which France abounds and which she cannot consume herself. (The idea of a surplus of products is clearly brought out here.) "It is easy," he says, "to carry on a commerce with them, and better in that the French vessels can bring back woods, copper, etc., things not only useful to us but necessary for our neighbors, who must get them direct from us, if they do not wish to lose the freight of their vessels going for the commodities."⁶⁷ It would seem as if Richelieu intended not only to carry on French trade with the

⁶⁴ Richelieu, *Testament Politique*, II, 67.

⁶⁵ *Ibid.*, II, 68-69.

⁶⁶ *Ibid.*, II, 68-69.

⁶⁷ *Ibid.*, II, 69-70.

north in French vessels, but desired to have the French merchant marine have a monopoly of the trade of all nations with the north. It was a large scheme, but it fits in exactly with his general economic and political idea of the great state, and the destruction of all forces which would hinder that conception. A great state would certainly mean a nation which was the predominant commercial center of the world. The first step in order to bring this about and assume control of commerce in the West Indies, etc., was to overpower Spain by means of military strength.⁶⁸ This was the underlying economic element in their relations in the Thirty Years' War, as will be shown.

Thus, commerce and the methods to obtain a development of it in France, dominated his thoughts towards the end of his administration, and no better indication of its importance, and of the keen intellect which solved its difficulties is found than in his change from a supporter of a high export and internal tax on goods to the support of a lower tax, in order to increase trade thereby.⁶⁹

⁶⁸ Richelieu, *Testament Politique*, II, 71.

⁶⁹ *Ibid.*, II, 88, et seq.

CHAPTER X

THE ECONOMIC ELEMENTS IN THE DIPLOMACY OF RICHELIEU

Richelieu's entire administration was taken up with the fulfilment of two objects: in the first place, to develop the external commerce, marine, and colonization of France, and make her one of the strongest nations from an economic point of view; in the second place, to create in France one of the strongest political states in Europe, and, as a consequence, place her in the center of the nations united or opposed to each other, in order to preserve the balance of power. He wanted to create, as one writer says, a combined continental and colonial nation.¹

His accomplishments with regard to the marine, colonies, and internal and external commerce, would indicate that during his administration he at least tried to lay the foundations of his first great object. But it has been shown that he could go only so far in his effort along those lines because of the fact that his second object, the continental supremacy of France, was a necessary preliminary to the first. Thus it was his purpose to bring about the pacification of Europe as the essential basis of all future progress.² The method of attaining that end was a war against the Hapsburgs. It now remains to consider the economic motive involved in his efforts to carry to a successful completion the second phase of his administration.

Few people at that time comprehended this ultimate purpose, as is shown by the fact, which Richelieu admitted, that few people could see the necessity of war, which he believed was really needed in order to preserve the dignity and credit of the King and state, over against other European powers. "Merchants and people in general, do not see this point," he says, "they complain about the burdens of war but do not see

¹ Vignon, L., *L'Expansion de la France*, Paris, 1891, 28-34.

² Richelieu, *Testament Politique*, I, 285-286.

the value of it for the state as a whole.”³ The Cardinal had the security of the nation in view, as a prerequisite for future prosperity. But the people could not look so far ahead. They could see the benefits of the suppression of the nobles, but the Thirty Years’ War was above their political or economic comprehension. The need of a strong frontier, the maintenance of the balance of power, and the question of the control of the sea as a part of a strong economic and political nationalism were beyond them. Richelieu realized this and was compelled to hold back many of his advanced policies until the coming peace would enable him to undertake them with a better hope of success.

In his diplomacy the theoretical rule guiding his relations was of course to assure the welfare of France by means of favorable negotiations with other countries. He was in particular guided by a spirit of political and economic reciprocity.⁴ The diplomatic relations between France and Spain during the period may first serve as a good illustration of this policy.

Spain, when Richelieu came into power, was beginning to decline, but nevertheless could be a very powerful and active foe. The Cardinal feared her and sincerely believed from the first, that the welfare of the world would be aided by the destruction of her power as well as that of the Empire.⁵ This nation was not only a danger to the existence of France on the seas and along her boundaries, but also threatened her internal status. The French Court, which was led by Anne of Austria and others suspected of treason, was half Spanish;⁶ and furthermore, according to Richelieu, the Spaniards were more or less interested in the attempts of the Huguenots to obtain independence.⁷ Why? Of course, in part for political reasons. Spain desired to weaken France, in order to be permitted to unite with Austria across Italy, and on other accounts. But it should not be forgotten that La Rochelle was important as a center for the distribution of salt. England realized this

³ Richelieu, *Mémoires*, XXVI, 87-91.

⁴ Lavisie, E., and Rambaud, A., *Histoire, Générale*, 12 vols., Paris, 1896, V, 368.

⁵ Richelieu, *Lettres*, II, 150.

⁶ Bridges, 113.

⁷ Richelieu, *Testament Politique*, I, 19-22.

and Spain no doubt did so, for she herself carried on a trade in that commodity. In fact, Richelieu complained in 1627 (the time of the Huguenot affair) of the attempts of the Spanish to hinder French commerce in salt with the Flemish people. There was evidently a commercial rivalry existing between France and Spain with regard to that trade.⁸ When the most important salt producing center of France revolted, it was naturally aided by Spain. The latter country would clearly have welcomed an independent La Rochelle from the economic as well as the political point of view.

The Cardinal, it would seem, was well aware of the commercial plans of Spain. He knew that she wanted to monopolize commerce in Flanders and indeed in all of her possessions.⁹ Furthermore, he knew of her attempt to deprive the Dutch of their trade in the Mediterranean and the Indies. Spain, he claimed, desired even at that time to become dominant in commerce in the Levant and in Russia, and to prevent the trade of Holland with France and England.¹⁰ The good relationship with Holland on the part of France is partly accounted for by this statement. Richelieu believed from the beginning of his administration that the Spanish nation was the one power which intended to spread its commercial monopoly over all the world, and that therefore its plans should be blocked. Immediate efforts were made to oppose her ambitions. Commercial relations were broken off, and at the same time, about 1626, the French began to form large companies to reestablish commerce, colonies, etc.¹¹ Steps were taken also to build canals through France, and thus cause all goods from the Mediterranean and the Levant to be sent north through France, instead of going by way of Spain, with the purpose of making France the common deposit of all the trade of the earth.¹² Even the superiority of geographical location which France possessed over Spain was considered from the economic point of view. The *Mercure François* quotes the statement made by the King's

⁸ Bassompierre, *Mémoires*, (Société de l'Histoire de France), 4 vols., Paris, 1870-1877, III, 432.

⁹ *Mercure François*, XXIII, 334-335.

¹⁰ *Ibid.*, XII, 4-8; 30-35.

¹¹ *Mercure François*, XII, 3-6.

¹² *Ibid.*, XII, 359.

Garde de Sceaux, that Spain in order to trade with Italy or any part of the Mediterranean, had to pass by France at night or under the *culverins* of the islands of Provence. Furthermore, in order to trade with Flanders, Holland, England, Denmark, and other northern lands, it was necessary for Spanish vessels to pass *le Ros Saint Mahe*, at the mercy of the French cannon, which could control the English channel with little difficulty.¹³ Thus France would find it easy, because of her fortunate geographical position, to defeat Spain in her commercial ambitions.

The favorable position of France on the Mediterranean Sea was brought forth a little later in the same way. The good coast and harbors of Provence could easily hinder the commerce of Spain and the latter's communication by water with Italy, so necessary in peace and war. At this point appears the definite object of keeping Italy independent of Spain, in order to separate not only their political but also their economic relations.¹⁴ The attempt to form a political and economic *zollverein* between the Empire and Spain through Italy was to be broken, because it endangered the very existence of France, politically and economically.¹⁵

On the other hand Richelieu knew that he could not oppose Spain upon the sea as he did not have the ships. So he was willing to compromise. In spite of the desires of French merchants to retaliate against the Spanish and Portuguese, who committed depredations upon their vessels on their way to and from the Indies or America, he tried to preserve peace, and asked the merchants not to commit hostile acts when they were in neutral waters.¹⁶ He professed belief in the principles of what is now called international law; although prudence very likely told him that this was for the best interest of France.

In 1634 Richelieu, in order to prevent trouble with the Spanish and Portuguese, agreed that they should have full rights within certain waters leading from the Indies and America. However, he asked that the French be permitted to sail into the ports and harbors of Spain and Portugal, as long as they

¹³ *Mercure François*, XII, 359-60.

¹⁴ *Ibid.*, XIII, 248-253.

¹⁵ Richelieu, *Lettres*, II, 81; *Mémoires*, XXVII, 222-223.

¹⁶ Richelieu, *Mémoires*, XXVIII, 204-205.

did not impose on the limits of the ports of the ocean reserved for them.¹⁷ Thus he was willing to concede certain rights to his colonial rivals in return for privileges for France.

At the very time when Richelieu was trying to make compromises, he was also attempting to overthrow the power of Spain in Italy, was advocating a large navy in order to sweep her off the ocean, and was allowing the situation north of France to be taken care of by the Dutch. The latter prevented any attempts on the part of the Spanish to strengthen their possessions in the Netherlands, by means of canals, etc., and thus build up their economic interests in those lands.¹⁸ The *Mercure François*, in 1627, mentions the attempts of the Spanish to obtain a closer union with their colonies and other lands, for the purpose of defence against enemies.¹⁹ Of course this policy would be dangerous economically and politically for France and should be prevented. The people of Flanders were consequently influenced to oppose these efforts of Spain.²⁰ Richelieu saw the economic struggle going on between Holland and Spain for control of the Indies and the sea. "The rise of either," he said, "would bring about the ruin of the other."²¹ As a consequence, he evidently played one against the other in the interests of France.

This was the general diplomatic position taken by France toward these two nations throughout Richelieu's administration. Finally, in 1635 the Cardinal declared that war with Spain was the only solution for the peace of Europe and the safety, the repose, and the commercial rights of the French people.²² At this time, in spite of the economic rivalry existing between Holland and France, an offensive and defensive league was made between them against the Empire of Spain.²³

In 1639, Richelieu was still pegging away at the Spanish in Italy besides trying to get the English into an alliance against Spain.²⁴ The three of them were to drive Spain off the seas.

¹⁷ Isambert, XVI, 409-411; *Mercure François*, XX, 711-712.

¹⁸ *Mercure François*, XIII, 566-571.

¹⁹ *Ibid.*, XIII, 590-595.

²⁰ *Ibid.*, XIII, 598-600.

²¹ Richelieu, *Mémoires*, XXVII, 362-365.

²² Richelieu, *Lettres*, V, 151-153; *Mercure François*, XX, 959.

²³ *Ibid.*, 383.

²⁴ *Ibid.*, 550-555.

Indeed, he gave orders at this time for the fleet to attack the Spanish towns, and (which is more important by far) her colonies.²⁵ Now apparently, the Cardinal had imperialistic ideas of the most advanced sort. Control of the seas meant colonies to him as it did to many other statesmen after him.²⁶ His *Testament* shows that this was his final intention and was his advice for those who were to follow him. He says that "there is little left for France in western commerce. The only chance is to obtain control of places occupied now by the King of Spain by means of a powerful war."²⁷ In another place he maintains that a navy will overcome Spain and protect France. It has been the only instrument which has enabled Spain to retain her colonies.²⁸ Furthermore, Richelieu advised a strong marine in order to keep Spain from Italy.²⁹ He believed that the only solution for the economic and political development of France lay in the defeat of Spain on land and sea;³⁰ on land so that she would not threaten the boundaries of France; on the sea, so that she could not hinder French commerce, and so that France might obtain some of the rich colonial rewards which she so much desired. Richelieu's part in the Portuguese revolt was probably taken because of his desire to break up the colonial empire of Spain.³¹

In one respect Richelieu looked upon Spain from a more or less friendly point of view. The latter purchased wheat, silks, etc., from France in considerable quantities. The Cardinal permitted this trade to be carried on, because it added to the wealth of France. "Richelieu in 1639," says one writer, "handled this difficult proposition very well. He allowed the traders by an edict the right to export goods at their risk. It was a sort of authorized contraband by which both countries profited."³² This edict illustrates the principle back of the Cardinal's administration. The political and external economic power of

²⁵ Richelieu, *Lettres*, 658.

²⁶ Sourdis, I, Introduction, III-VII; Richelieu, *Mémoires*, XXIII, 257-258.

²⁷ Richelieu, *Testament Politique*, II, 71.

²⁸ *Ibid.*, II, 52-53.

²⁹ *Ibid.*, II, 54-64.

³⁰ *Mercure François*, XXIII, 125; Richelieu, *Lettres*, III, 81.

³¹ Wakeman, H. O., *European History (1598-1715)*, New York, 1916, 116.

³² Pigeonneau, II, 423.

Spain was a danger to the development of France; therefore, it should be destroyed. However, enmity to Spain should not prevent France from taking advantage of any opportunity to better herself, even though it should lead to trade with a nation with which they were at war. French merchants actually became the overland carriers of goods between Spain, the Netherlands, and Germany.³³

Richelieu was guided by the same nationalistic ideal in his diplomatic relations with England. The latter country, he claimed, had failed to observe the various clauses of the commercial treaty of 1623. They placed various restrictions upon the importation of French goods, such as cloth for example. Now the French desired their government to retaliate and consequently there arose in France the demand that the English should be treated in France as the French were treated in England.³⁴ Therefore when Richelieu came into office he had the problem confronting him of arranging commercial relations which would be satisfactory to both countries.

One of the first steps in that direction was the marriage of Henrietta of France to the English Prince of Wales. The Cardinal hoped that this alliance would result not only in the establishment of good relations between the two countries, but that it would serve as a counterweight to the grandeur of Spain,³⁵ and also would prevent a powerful commercial and colonial alliance between England and Holland.³⁶

The effect of this alliance was temporary, although both England and Holland lent boats to France in 1625, to be used against La Rochelle at a time when France was at war with Spain. The explanation for the change is simple when one considers not only the religious side of the marriage alliance but the commercial difficulties in the way of a happy consummation of its aims. France and England were beginning the

³³ *Calendars of State Papers and Manuscripts, (Venetian Series)*, London, 1912-1916. XX, 162.

³⁴ Levasseur, I, 273.

³⁵ Richelieu, *Mémoires*, XXIII, 78.

³⁶ *Ibid.*, XXII, 293.

Richelieu must have had in mind the failure of Buckingham to bring about a marriage alliance between the two royal houses of Spain and England. See Montague, F. C., *Political History of England*, New York, 1911, VII, 110-117.

intense commercial rivalry on the sea which was to be the keynote of their diplomatic relations for the next two hundred years. Indeed, Richelieu in a letter said that the three roots of trouble between France and England were first, the religious difficulties concerning the right of Henrietta in that respect;³⁷ secondly, the commercial side as seen not only in the retention of French vessels and their goods by the English, but in the retaliation in a similar manner by the French;³⁸ in the third place, the aid of La Rochelle by the English.³⁹ However, the first cause of trouble could have been settled easily if the latter points in dispute had not prevented any lasting solution during the entire period. In fact, one might say that the first four or five years of Richelieu's administration were taken up with a sharp commercial controversy with England, with the military base of operations at La Rochelle. After that, this rivalry was extended over the seas toward various colonies, where the actual rivalry of the two nations is seen to the fullest extent. The Thirty Years' War complicated to a certain extent their diplomatic relations so far as Europe was concerned, because England was a much sought-for ally, in that particular struggle.⁴⁰

Taking up the commercial phase of the trouble, one discovers a sharp rivalry on the sea, which resulted in depredations on French commerce, which in turn led towards the preparation of a war marine to protect French merchants.⁴¹ Richelieu stated

³⁷ Even the marriage of Henrietta had its economic side because the French in spite of the demands of the English had failed to pay the dowry which had been promised. In fact the Venetian ambassador summarized the causes of the trouble between the two countries as follows: (1) the La Rochelle affair, (2) navigation troubles, and (3) the question of the dowry. See *Calendars, (Venetian)*, XX, 66.

³⁸ *Ibid.*, XIX, 592. "Seizure of vessels on both sides makes both nervous. Starting as a friendly dispute between Denmark, England, and France in 1626 over the question of navigation, it now began to assume serious proportions." See *Calendars, (Venetian)*, XIX, 482-483.

³⁹ Richelieu, *Lettres*, II, 243.

⁴⁰ So far as affairs in Europe were concerned, the relation of France and England in the Thirty Years' War was influenced largely by territorial desires. The question of the Palatinate and Lorraine was at issue. England was interested in the former and France the latter. Neither country was enthusiastic over the demands of the other. See *Revue des Questions Historique*, 1889, XLV, 489-501.

⁴¹ Richelieu, *Lettres*, II, 279-281; 305. Sourdís, I. Introduction, II-III.

openly in 1627 that he was going to protect French trade on the sea.⁴² Furthermore, in following out this policy of protection for French commerce, he used the same mercantilistic policy toward England as toward Spain. He would not permit the importation of English cloth, but wanted England to send over her raw materials, such as iron, hides, etc.⁴³ He desired to build up the manufactures of France, as being one of the requirements of a strong state. It is no wonder that England was afraid of the results that would follow if Richelieu carried out his policy.⁴⁴

Colonial interests began to occupy a place in the English-French relations as early as 1626. "For," says Richelieu, "the establishment of the company of Morbihan in 1627 alarmed the English and the Dutch who fear our control of the sea as an ultimate goal."⁴⁵ This fear on the part of the English is substantiated by the reports of the Venetian ambassador to England in 1627. He says, "the dispute over the Queen's household and the shipping are merely pretexts and not difficult to adjust....."⁴⁶ but after that they would never permit the French to strengthen themselves at sea, because they are so close. More than one person told me frankly that not to oppose this would amount to giving the French the keys to his majesty's dominions."⁴⁷ He goes on to point out the fact that the French look upon Richelieu's attempt to build up a marine as a means whereby he could make himself supreme, not only over England and her India trade, but in France itself. This and other quotations indicate that the English feared the colonial aspirations of the French and realized that the control of the sea was the means by which France might not only break

⁴² Richelieu, *Lettres*, II, 389-390.

⁴³ Pigeonneau, II, 423.

⁴⁴ In his report concerning the relations existing between France and England in 1626, the Venetian Ambassador to England says, "Richelieu's care for naval affairs, either by means of a company or otherwise; the passage of the Galleons from the Mediterranean to the ocean and other manoeuvres of France all furnish pretexts for comments, suspicions, etc." See *Calendars*, (*Venetian*), XIX, 592.

⁴⁵ Richelieu, *Mémoires*, XXIII, 127.

⁴⁶ France had failed to pay the rent for the ships loaned by the English for use against the Huguenots in 1626, much to the disgust of the English. See *Calendars*, (*Venetian*), XX, 122-123.

⁴⁷ *Ibid.*, XX, 98-99.

up their beginnings of an empire, but even attack England itself.⁴⁸ "The secretary Conway," writes the Venetian ambassador in 1626, "whom I visited spoke to me and read a letter addressed to the King announcing the great attention paid by Richelieu to maritime affairs, the ships expected from Holland, and others off La Rochelle and in the ports of Brittany and Normandy, the arrangement made by the merchants for a company to trade off the East Indies.....etc. This is contrary to the common weal and is not generally understood, etc."⁴⁹

Both England and France seemed to realize that they were to be mortal enemies for control of the sea and all that goes with it. As one writer says, "Richelieu constantly believed that Spain, England, and Holland derived their greatness and power from the marine. Like a genius, he plunged into the future. He knew that Spain would not control her colonies much longer, that Holland, whether she maintained herself or not, would never be the great danger to France. But as for England, he feared her and the more she increased in power, the stronger he wished to make France."⁵⁰

The capture of merchant ships by both sides served as the basis of their opposition to each other. "This has to be stopped," says Richelieu, "or war will result."⁵¹ Consequently the great economic struggle between these two important nations found a first significant expression in 1626 over this question of navigation.⁵² Richelieu even went so far as to call the English pirates, accusing them of committing all sorts of outrages against the French merchant ships. "No heed was taken of any agreement made with France."⁵³ In fact, they

⁴⁸ *Calendars, (Venetian)*, XX, 242. The Venetian ambassador in France writes in 1627, "They are making forty pieces of artillery in the foundries here for the fleet, according to the invention of Targoni I wrote of. . . The terrible results they produce are shown by experiments . . . before the Cardinal, etc. He called upon me yesterday and said he was going in a fortnight to Brittany, not only to reduce La Rochelle but he boasts that he will enter the ports of England itself, etc."

⁴⁹ *Ibid.*, XX, 31.

⁵⁰ Gouraud, I, 191.

⁵¹ Richelieu, *Mémoires*, XXIII, 236-237.

⁵² *Calendars, (Venetian)*, XIX, 222-223, 286; XX, 267.

⁵³ Richelieu, *Mémoires*, XXIII, 271-272, 277.

Henry IV, notwithstanding his dire need of the English Alliance, frequent-

even took advantage of the faith the French placed in peace agreements between the two nations.⁵⁴ Of course he failed to consider the English side of the case. At any rate it is clear that at the start, the Cardinal decided that if France was to be powerful and wealthy, the English must be overcome.⁵⁵

Matters were brought to a head by the establishment of a marine, as has been discussed before.⁵⁶ Efforts were made to arrange a satisfactory solution of the affair by means of negotiations. However, the piracies committed upon the merchant ships of both nations brought in another element which made a peaceful settlement difficult. In 1627 the King of England forbade all commerce with France, and confiscated French vessels and goods found in England. Louis XIII in retaliation forbade his subjects to trade with England and accused the latter of breaking her agreement.⁵⁷ Evidently the La Rochelle affair and the marriage question were not the leading points at issue between these two powers.

Richelieu now believed that he had a good cause, and it is interesting to note how he tried to influence public opinion against England. For example, the *Mercure François* mentions the accusation of the English, that the French were laden with taxes, etc. "However," it says, "if the people of France suffer because of the war, the English endure just as much, and curse the Duke of Buckingham for having caused the rupture of commerce. The merchants have lost all their trade, and the people are overburdened with the military expenses. All for the imaginary purpose of obtaining power."⁵⁸ Many traces of the ly protested against the violation of the freedom of French ships. See Cheyney, E. P., *A History of England*. New York, 1914, I, 446.

⁵⁴ Richelieu, *Mémoires*, XXIII, 314.

⁵⁵ *Ibid.*, XXIII, 270-271; Sourdis, Introduction, II-III, *Lettres*, II, 561.

⁵⁶ See Chapter VII.

⁵⁷ *Mercure François*, XIII, 200-206.

⁵⁸ *Ibid.*, XIII, 832-833. Richelieu had good reason to desire the support of his people, because of the fact that the war with England ruined the business of French merchants along the coast, who constantly complained on this account. The English even expected the fall of the Cardinal because the merchants of Bordeaux, Rouen, Gascony, Guienne, etc., depended on English trade. See *Calendars, (Venetian)*, XX, 122-123, 151, 257.

birth of the intense rivalry of these nations may be seen at this time. Both suffered, but were willing to endure, because of the bright rewards of the future and the thoughts of the weakness and sufferings of the other side. Public opinion was influenced then as now in the direction of material gains. The resemblance of the past to the present appears when Richelieu in the *Mercure François*, accuses the English of double-dealing and lining up his allies against him.⁵⁹ In a certain sense it would seem that the edict prohibiting all commerce with England, except by the permission of Richelieu, was the first step in the economic struggle between the two nations which was to come to a climax in the famous blockade phase of the Napoleonic War.

But the match which really started the struggle in 1627 was found in the aid given the Huguenots by the English. Not satisfied with undergoing the displeasure of the Cardinal with respect to the marriage alliance and the question of French and English commerce, the English had incurred his wrath by taking issue with him in regard to La Rochelle. They had captured the island of Ré and had, he believed, tried to draw other people to their side, using as a pretext the religious question.⁶⁰

At that time salt was one of the principal products of the

⁵⁹ *Mercure François*, XIII, 833-835.

⁶⁰ Trevelyan says that English interference in the Huguenot question stultified the European policy of both nations. "The Duke of Buckingham," he says, "couldn't blind Parliament to the truth, even by undertaking, with huge Protestant bluster, the relief of those very Huguenots whom he had been helping Richelieu suppress." He then goes on to say that the English were sent to seize the island of Ré off La Rochelle which was to serve as a basis for English commerce and privateering at the expense of France, secured by the neighbourhood alliance of the great Huguenot party. See Trevelyan, G. M., *England under the Stuarts*, New York, 1910, 136-138.

Another English writer says that Buckingham took command in 1627 with instructions first to offer the citizens of La Rochelle the help which they would need if threatened with attack by their King, and then to make good the English mastery of the sea and destroy French and Spanish commerce. "This conquest of Ré would have given the English a good basis for naval operations and political intrigue." See Montague, F. C., *History of England (1603-1660)*. *Political History of England*, VII, New York, 1911, 143-144.

external commerce of the French.⁶¹ Both political and economic interests influenced her to engage in it, and develop the exportation of that important commodity. A valuable trade in salt was carried on in northern Italy and with the Swiss.⁶² This might account to a certain extent for Richelieu's interest in that part of Europe. Furthermore, the large amount of salt consumed in Flanders has a peculiar significance when one comes across attempts on the part of Austria and Spain to gain absolute control in that country, much to the distress of France, as will be shown later.

La Rochelle was one of the best salt ports on the ocean, in spite of efforts of Richelieu to build up other harbors where foreigners could obtain this commodity.⁶³ However, the great geographical discoveries had brought about the rising importance of all the Atlantic ports.⁶⁴ As a result, La Rochelle, Nantes, Dieppe, etc., became very important not only in the eyes of Richelieu, but in the eyes of foreign nations as well. Furthermore, they were Huguenot strongholds.

The basis of the trouble was of course England's interest in the Huguenots. The Cardinal felt that England did not have much personal sympathy for the latter. He was materialistic enough to base the affair on the principle of a struggle for sea power. Indeed, to dominate the sea was the desire of France. "None of them," he says, "not even the Huguenots, saw the advantage of the control of La Rochelle because of its salt mines."⁶⁵ Richelieu was probably mistaken in the latter part of his assertion. For it is not unlikely that the economic importance of La Rochelle, especially with regard to the salt mines, was the controlling factor in causing England, Spain, and Holland to be friendly toward the Huguenots. Fundamentally, the struggle between England and France was one for sea power even at that time.⁶⁶ But the salt mines and the control of the

⁶¹ See Chapter VII.

⁶² D'Avenel, *Absolue Monarchie*, II, 275.

⁶³ *Ibid.*, III, 194-5.

⁶⁴ Lavissee, E., *Histoire de France*, 9 vols., Paris, 1896, VI, 277.

⁶⁵ Richelieu, *Mémoires*, XXIII, 262. Yet Richelieu entertained a fear of the economic relations existing between La Rochelle and the English, so that he tried to keep track of the trade carried on between them. See Richelieu, *Lettres*, II, 499.

⁶⁶ *Calendars, (Venetian)*, XX, 77, 191-192, 282.

Garonne and Loire rivers, together with the revenues to be obtained from the Dutch and other peoples as a consequence of the possession of the salt mines, must have been objects of desire to the English, especially since they carried on an important commerce in that commodity with La Rochelle.⁶⁷ The Venetian ambassador at London seems to have had difficulty in swallowing the statement of the English ministry that they had lately conceived of the war against the French as based upon the sole preservation of the reformed church and the public weal.⁶⁸ There can be no doubt that England had a certain economic interest in the welfare of her fellow Protestants in La Rochelle.⁶⁹ On the other hand, Richelieu at this point frankly admits that one of the predominating motives back of his desire to retain La Rochelle was commercial, namely, the control of the salt mines.

As a first step in opposition to the efforts of England with regard to La Rochelle, Richelieu proposed a union with Spain. He did this not only for political but also for economic reasons, and even though this plan failed it is of importance because it illustrates his diplomatic skill in political as well as in economic affairs. He knew that Spain and France were competitors in the salt trade. Therefore he proposed a scheme whereby a price was to be set on that commodity which was to be raised or lowered only by common consent. In this agreement he brings out the importance of the salt trade with the northern countries, and then says that a mixture of Spanish and French salt would

⁶⁷ *Calendars, (Venetian)*, XX, 341. *Calendars of State Papers and Manuscripts, (Domestic Series)*, (1625-1642), London, 1858-1887, X, 534, 553.

⁶⁸ *Calendars, (Venetian)*, XX, 374.

"After the capture of Ré, they (the English) mean to attempt Oléron, which is also very important on account of its salt pans, and both islands are very convenient as they command the mouths both of the Garonne and the Loire, the chief rivers of France, enabling their possessors to take toll sufficient to pay the cost of the garrison and the fleet with something over, indeed, some say that already certain Dutch ships which went to lade salt evaded a duty claimed by the English, by main force and flight." From a report of the Venetian ambassador in England in 1672. See *Calendars, (Venetian)*, XX, 341.

⁶⁹ The French claimed that the English did not aid the Huguenots for religious but for territorial and commercial reasons. See, *Mercure François*, XIII, 809-811; XIV, 9-14.

offer the best market, due to the fact that one was too strong and the other was too weak.⁷⁰ He offered Spain a partnership in a salt monopoly as an inducement towards an alliance against England. The commerce in this commodity must have been very important to have caused him to use it as a means of bringing about such a vital union.

Even though he did not succeed in this plan, he went ahead and took action against the English, who were constantly preying upon the French commerce. The Duke of Guise was ordered to prepare a fleet and to oppose them.⁷¹ The English were ready to meet them, for the fear of a union between France and Spain had caused that country to take a definite stand in her relations to La Rochelle.⁷² England probably saw at a glance that this was a plan which promised to put a stop to French commercial and political ambitions.

An edict of September 20th, 1627, breaking off relations with England, indicates that the two nations were on the point of an armed conflict.⁷³ This marks definitely not only the beginning of the struggle for control of the sea but also the contest for the colonial empire of the New World. Richelieu had taken the first step toward this great event, when he began to build up the marine. He took a second step when he attempted to increase the political and economic importance of Brittany and Normandy and make the harbor of Brest the commercial emporium of the world, together with other ports near it.⁷⁴ England likely realized the danger which threatened her and even considered the capture of Brest as a means of thwarting the design of the Cardinal, who would have liked to make this port the center of trade and navigation.⁷⁵ She was afraid of the growth of France, and even the commercial alliance proposed between the Hansa cities and France possibly caused her to

⁷⁰ Richelieu, *Mémoires*, XXIII, 288-289.

⁷¹ *Mercure François*, XIV, 38

⁷² *Calendars*, (*Venetian*), XX, 77.

⁷³ Isambert, XVI, 215; Richelieu, *Mémoires*, XXIII, 277-278.

⁷⁴ *Calendars*, (*Venetian*), XX, 191.

⁷⁵ *Ibid.*, XX, 281.

"Something has also been said," says the Venetian ambassador, "about the Port of Brest, which is considered of great advantage for thwarting the designs of the Cardinal, who would fain make it the center of trade and navigation, but when on the spot they will make their choice."

fear the Cardinal as an opponent of England's claims to supremacy on the sea.⁷⁶

On account of this distrust of the ambitions of Richelieu, Great Britain began to look for an ally. It was natural enough that La Rochelle with its economic importance and its relative political and religious independence should attract her. Here was one great opportunity to destroy the growing naval power of France before it could threaten either England or her colonies. Both countries began negotiations to break the neutrality of La Rochelle. The French tried to influence the Huguenots by fear of their land forces, near at hand; the English by setting forth the interests of the place and by blandishments towards the inhabitants, having issued a decree that all may trade and bring food into the town and islands, as, according to ancient claims, they belong to the English crown, etc.⁷⁷ The French proposed force, and the English, an economic alliance and old political claims.

Both the English and the French seemed to be well aware of the economic importance of these lands of the Huguenots, as each nation was afraid of the control of the latter by the other. But this fear on the part of the English was likely increased when they saw in the possession of La Rochelle by the French, together with an alliance with Spain, a loss of maritime and colonial power. On the other hand, the French could see in English control an invasion of their country, and a loss of valuable economic territory, as well as the chance for future naval expansion. It is not surprising that Richelieu said that he would not talk peace with the English as long as their flag waved above French soil,⁷⁸ nor that in his efforts to convert France from a continental into a naval power, he threatened England with dire misfortunes, when he should have a fleet large enough to defeat her.⁷⁹ The English knew when he became superintendent, grand master, etc., that they would have to look out for his

⁷⁶ *Calendars, (Venetian), XX, 56.*

"I believe that Richelieu would gladly listen to this (the proposal of the Hansa towns) for the sake of his marine, and it will generate ill will here by reason of their claims to supremacy at sea," says the Venetian ambassador to England.

⁷⁷ *Ibid., XX, 341.*

⁷⁸ *Ibid., XX, 371.*

⁷⁹ *Ibid., XX, 179, 199.*

increase of naval strength and his political alliances, especially with La Rochelle.⁸⁰ It would seem that these two countries began their colonial struggle at this time, and it is to the credit of Richelieu that France won the first engagement by the capture of La Rochelle.

For a while it looked as though both nations must fight to the finish. The sole basis on which the French would make peace with the English in 1629 was that England should give up all thoughts of La Rochelle and the Huguenots forever.⁸¹ Richelieu realized that if France was to attain national political and economic unity, and was to enter upon an expansive policy, both Spain and England would have to be guarded against. France must have her place in the sun, and her interests must not be endangered by either nation.⁸²

In 1629, the rivalry between the two nations had extended into the distant colonies. Port Royal in Canada and the island of Saint-Kitts had been taken from the French by the English. As a result, Richelieu sent a fleet "to show the English that they were not kings of the sea any more."⁸³ In 1629, under the leadership of Cahusac, they recaptured the island of Saint-Kitts.⁸⁴ Richelieu accused the English of entertaining the desire even at this time to cast the French out of Canada, a remarkable forecast of later events.

Then came a change in Richelieu's policy. In 1629 he sent Chateauneuf to England as his representative to try to arrange a settlement of disputes and a commercial treaty which would enable both countries to live in a happy union.⁸⁵ Under these general directions the ambassador had specific instructions which he was to try to carry out. For example, he was to attempt to settle the dispute with regard to the commercial relations of France and England with Spain, for both nations were trying to prevent each other from trading with the latter. He was also to take up the affair of the flags, in regard to salutes on the high seas.

But what was the cause of this change? The 'Thirty Years'

⁸⁰ *Calendars, (Venetian)*, XX, 155.

⁸¹ *Ibid.*, XXI, 7.

⁸² Richelieu, *Mémoires*, XXIII, 281.

⁸³ Richelieu, *Lettres*, III, 446-447.

⁸⁴ *Ibid.*, III, 447-448; 477-478; 518-519.

⁸⁵ *Ibid.*, III, 447-448; 518-519; 477-478.

War had reached a stage wherein the defeat of the Hapsburgs in Austria and Spain seemed a necessity. Richelieu wished England to join with him in aiding Sweden.⁸⁶ Therefore, he had to give up his active struggle with England for control of the sea, in order to obtain her aid in the Thirty Years' War. Whether or not he would have continued the conflict after the war if he had lived is a mere matter of conjecture. The probabilities are that when peace had been declared and his long delayed marine had been created he would have taken up again an economic and political opposition to England.⁸⁷

Richelieu at this time showed his diplomatic genius by having his ambassador demand a new treaty from the English, which would bring about secure and free mutual commerce. All agreements in past treaties were to be renewed.⁸⁸ Furthermore, the problem concerning the restitution of vessels captured by the English was to be taken up,⁸⁹ and at least a compromise was to be agreed upon. England was no longer to place her neutrality in question by selling ammunition to the "infidels," which, according to Richelieu, caused even the English people to murmur.⁹⁰

The colonial question arose at this time, but the French ambassador wisely placed the emphasis upon the other commercial problems. It is significant, however, that in his *Memoirs* Richelieu reports that the King of England told Chateauneuf, that the King of France would produce a better indication of his desire of living in peace and good friendship with him, by departing from his desire to become master of the sea.⁹¹ Richelieu himself points out that even the English centered the entire struggle on the control of the sea. "Jealousy of French power on the ocean caused English opposition in 1629," says the Cardinal, "even the merchants of England were envious of those of France."⁹²

⁸⁶ Richelieu, *Lettres*, III, 447-448. Pigeonneau II, 414-415.

⁸⁷ See *Calendars*, (*Venetian*), XX, 179.

⁸⁸ Richelieu, *Mémoires*, XXV, 198-199; Levasseur, I, 264.

⁸⁹ A peace agreement had been made April 24, 1629, which established free commerce, etc. But this agreement had been broken by England. See Richelieu, *Mémoires*, XXV, 199, also Dumont, V, pt. 2, 580-581.

⁹⁰ Richelieu, *Mémoires*, XXV, 199-201.

⁹¹ *Ibid.*, XXV, 201-205.

⁹² *Ibid.*, XXV, 211. The Dutch ambassador in France wrote in 1628 "that the Cardinal clings to his old idea about establishing com-

The recapture of Saint-Kitts strengthened the fears of the English. But Chateauneuf, in a kindly way, assured them that the French desired only to enforce the peace terms, and that they should have no fear of the growing sea power of the French.⁹³ The English King replied that just as Queen Elizabeth had warned Henry IV to leave the sea alone, he, Charles I, would do the same.

Richelieu, in order to settle the trouble concerning the sea, then sent Count de Nitschdil as a general representative to call on the King of England. But the latter was not willing to concede that equality on the sea which Richelieu demanded. He said that the French were causing trouble by persisting in increasing their marine power. The French representatives laughed at the idea of another person's telling a great ruler what he should do in his state.⁹⁴ Richelieu in reply asserted that the arms of France were always for defence and assistance against enemies and never for purposes of oppression.⁹⁵

In 1630 De Fontenay-Mareuil took Chateauneuf's place in England. Richelieu instructed him to try to obtain the restitution of Canada, and the restoration of the merchandise and vessels captured since the peace agreement of 1629, and to attempt to arrange a good peace between the two crowns, and settle all commercial difficulties. He even mentioned the so-called "Laws of the Sea," as giving the final decision with regard to the restitution of the ships. "Reason and justice are to decide affairs," he said.⁹⁶ The new ambassador was to try to settle the commercial relations between France and England, and furthermore to determine England's attitude in the Thirty Years' War, especially with respect to the Palatinate.⁹⁷

⁹⁴ Richelieu, *Mémoires*, XXV, 205-6.

panies as in Holland, and extending navigation. The English will never permit this, so as not to put arms in the hands of thousands of hostile neighbors against an open Kingdom like this, and state policy does not allow it." *Calendars, (Venetian)*, XXI, 446.

⁹³ Richelieu, *Mémoires*, XXV, 201-5. A good example of the fears of some of the English people is found in a letter of an English captain in 1630, who was afraid of the intention of France to dominate Canada and New England to the detriment of the English. *Calendars, (Colonial, 1574-1660)*, London, 1860, I, 106.

⁹⁵ *Ibid.*, XXV, 205.

⁹⁶ Richelieu, *Lettres*, III, 518-519.

⁹⁷ *Ibid.*, III, 671-672.

Finally, on March 29, 1632, after many negotiations, the treaty of Saint-Germain was signed. In this treaty justice was to guide the nations in the matter of prizes of the sea, depredations, and reprisals. Commerce and navigation were to conform to the liberal principles of the past treaties of 1606 and 1610, which, according to the French, had been ignored by the English. Lastly, the colonial possessions taken by England were to be returned to France.⁹⁸ It seems that the importance of this treaty has been overlooked. The argument shows clearly the competency of Richelieu, in settling not only political disputes but economic problems as well. Furthermore, it was a clever solution of the difficulties between England and France. Theoretically, Richelieu obtained what he desired and strengthened the commercial and colonial power of France thereby.

After this, the Cardinal was busy with the great continental struggle and could not concentrate so much upon the foreign economic and political situation. However, in 1635 he was forced to send a combined French and Dutch fleet to guard the channel. But the Dutch did not remain long with the French. They were afraid of the English claim of being "Lord of the sea." To avoid taking sides in a sea dispute between the two nations, the Dutch sailed away and left the French alone.⁹⁹ Now the issue was a question of control of the British channel.

"The King of England," says Richelieu, "in a notice placed in the Bourse, affirmed the English control of the channel. Commerce should be free but under English supervision." But the Cardinal having all he could do to handle the Thirty Years' War, was forced to give in to the English on this as well as the general question of the sea in spite of an almost national hatred engendered over the problem.¹⁰⁰ He tried to keep up friendly relations with the British and retain them in an alliance with Holland and France instead of with Spain.¹⁰¹

⁹⁸ *Mercurius François*, XVIII, 39-52; *Calendars, (Venetian)*, XXI, 311-315; Levasseur, I, 264; Dumont, VI, pt. I, 31-32.

⁹⁹ Richelieu, *Mémoires*, XXVIII, 359-360.

¹⁰⁰ The English, in 1636, were constantly threatened by French ships. The French sailors called the English, "English dogs." Richelieu according to reports had promised a sum of money to those men of war who could interrupt the King of England's packet. English vessels coming from La Rochelle, were forced to avoid the French fleets for fear of capture. See *Calendars, (Domestic, 1635-1636)*, IX, 561-562.

¹⁰¹ Richelieu, *Lettres*, IV, 559-567.

He even attempted to settle the question as to who should salute when English and French ships met on the high seas. He favored their relative location as determining this matter; that is, if they should meet near the French coast, the English would salute the French, and if they should meet near the English coast it would be vice versa.¹⁰² Nothing was accomplished with regard to this point.

In 1637, he again tried to get the English to break their neutrality and come in against Austria and Spain. "However, the gain," he said, "in selling contraband goods as a neutral with warring nations, made England a neutral."¹⁰³ It is plain that Richelieu could see the economic forces underneath the diplomacy of the nations at that time, especially when they concerned his enemies. In his *Memoirs* in 1637, he says, "Is this neutrality of England due to an honest love of repose, or is it due to the gain to be derived thereby, during such a neutrality, by conveying contraband goods to warring nations as well as carrying on during the wars the entire commerce of France and Spain. Is that why England kept from a direct alliance with France?"¹⁰⁴ At another place he complains that England constantly aided Spain to the detriment of France.¹⁰⁵ England still feared the French on the sea, and Richelieu realized this as is shown by the fact that he instructed his ambassador there to avoid a discussion of England's imaginary empire of the sea.¹⁰⁶ He knew that England was torn between two policies, the materialistic neutrality, or the aid of the Elector Palatine by participation in the war. It was the aim of France to get her to follow the latter policy.¹⁰⁷

When the Cardinal died, his plans, of course, were left incomplete. What he would have done after the Thirty Years' War is not mere conjecture however, for in his *Testament Politique* he has strongly advised the necessity of a powerful marine to oppose the claims of the English to being Lord of the Seas."¹⁰⁸

¹⁰² Richelieu, *Lettres*, V, 66-70.

¹⁰³ *Ibid.*, V, 854-856.

¹⁰⁴ Richelieu, *Mémoires*, XXX, 523.

¹⁰⁵ *Ibid.*, XXX, 529.

¹⁰⁶ Richelieu, *Lettres*, VI, 10-12.

¹⁰⁷ Richelieu, *Testament Politique*, II, 49-50.

¹⁰⁸ *Ibid.*, II, 50-52.

Richelieu looked at England in a large degree from the economic point of view. He saw in both England and Holland, two of his great rivals in the East Indies and Persia.¹⁰⁹ In fact one must conclude that the former was a definite colonial and commercial opponent of France at that time. Spain was on the decline and he knew it. England was the enemy of the future and he wanted to prepare against her. If he had lived long enough to carry out his economic policy it is a question whether or not our land would have contained one English-speaking nation as today. At any rate the Thirty Years' War put off the commercial and colonial struggle for a hundred years — for better or for worse — but Richelieu seems to have been aware that it had to come in the end.

Turning to Holland, one discovers that Richelieu's attitude in regard to that country was different from that toward England and Spain. As has been shown before, he admired the Dutch industrial and commercial genius, built up in spite of numerous obstacles. Indeed, he described it as a model for the future growth of France.¹¹⁰ He was at no time actually willing to undertake a hostile attitude toward this nation, although he threatened her with dire punishment when she refused to lend him boats to be used against England.¹¹¹

Just as with England, the economic rivalry between France and Holland, even though it existed, was not permitted to dominate on account of the Thirty Years' War.¹¹² In fact it seems that the alliance of 1627 with the Dutch, for mutual protection and satisfactory commercial relations, was an effort on the part of Richelieu to enlist the aid of this country not only to put down the Huguenots, but also to aid in the prosecution of the Thirty Years' War.¹¹³ He was constantly afraid of an alliance between Spain and Holland,¹¹⁴ even though he did not like to see the Dutch carrying most of the French commerce on their vessels.

The treaty of 1627 was arranged with the purpose of removing

¹⁰⁹ Richelieu, *Testament Politique*, II, 73-74.

¹¹⁰ See Chapter IX, 138.

¹¹¹ *Calendars*, (*Venetian*), XX, 192.

¹¹² Levasseur, I, 266.

¹¹³ *Mercurie François*, XIV, 14.

¹¹⁴ Richelieu, A. J. Cardinal, duc de, *Maximes d'État, et Fragments Politique du Cardinal de Richelieu*, Ed., G. Hanotaux, Paris, 1880, 730-731.

these difficulties, and of engaging the Dutch to act as the protectors of the French marine which was being built at that time. Improved commercial relations were the result of this treaty.¹¹⁵ Yet the Dutch were not so friendly as they might have been, as is shown by the incident in which they looked on in glee while the English captured certain French vessels near their coast.¹¹⁶ The fear of the English by the Dutch, was one of the most bitter complaints made by Richelieu during the Huguenot affair. He says that Spain proved to be a false ally, and Holland an un-neutral neutral, in that she persisted in sending ammunition to the English. She was afraid of the latter country and really favored her.¹¹⁷ Richelieu did not like this, as is shown by his letters. He thought it right for France to trade with Spain, as their commerce was important; but for the Dutch to do so was wrong.¹¹⁸ International rights were thus considered from narrow national points of view.

Both Holland and France were looking after their own interests on the sea. The former country had before this supplanted French navigation upon the east coast of Africa, and was very strong in the East Indies.¹¹⁹ She, like England, took pleasure in carrying on depredations upon French commerce, even forming an alliance with the Barbary pirates to do so. Richelieu tried to force the Dutch to accept terms by which rules of reciprocity should guide their commercial relations. "He did not want to undertake a tariff war," says one writer, "which would have alienated the valuable Dutch commerce and influence. He tried to make the Dutch his associates in enterprises in the East and in the Americas. The treaties of 1627 and 1629 stipulated that they aid the French merchant boats, and allow their men to associate with the French in the navigation to both of the Indies."¹²⁰ In fact, Richelieu desired to settle their

¹¹⁵ Levasseur, I, 266; Dumont, V, pt. 2, 523.

¹¹⁶ *Mercure François*, XIV, 159.

¹¹⁷ Richelieu, *Lettres*, III, 66, 78.

¹¹⁸ *Ibid.*, III, 471. Holland as a matter of fact was rather in sympathy with the Huguenots and the English as against Richelieu. She not only refused to take action as an ally of France, but would only lend boats to the French to be used against Austria and Spain. See *Calendars*, (*Venetian*), XX, 115, 192, 310, 353.

¹¹⁹ Levasseur, I, 273.

¹²⁰ Pigeonneau, II, 424-425. This treaty illustrates the fact that Holland also desired to stay by her agreements with England. Probably she was

commercial relations by means of a compromise and thus open north Europe, the Levant, Africa, Canada, the Indies, Persia, etc., to trade.

The Cardinal knew that even though Holland was a dangerous economic and political rival, yet she was the natural enemy of Spain and as such should be used as one of the elements which was to contribute to the defeat of the Hapsburgs. In 1630 he took this stand definitely when he arranged a treaty with Holland which completed those of the past.¹²¹ After this she was one of the allies, and her commercial power was forgotten for the time being by the French. But, the Cardinal did not forget the economic side, as shown by the fact that in his *Testament Politique* he left plans for obtaining the commerce in the north which the Dutch and the Flemish had controlled.¹²² This intention has an added significance when studied in connection with the Thirty Years' War.

Richelieu's relations with Italy were of course interwoven with his purpose of keeping the Spanish and Austrians from uniting through that country, which would have been the death blow to any plans he had with regard to the development of France. Her boundaries had to be secure, not only at that time, but also for the future.¹²³ He did not desire territory in Italy. In fact he proposed the formation of a confederation in that country,¹²⁴ which would keep Austria and Spain separated,¹²⁵ for the Cardinal frankly admitted in 1637 that the French did not desire new lands in Italy, or on the Rhine border.¹²⁶ All he wanted was an opportunity to develop France without fear of foreign invasion, a prerequisite to a strong economic state. Until a lasting peace was assured for France so far as concerned foreign affairs, Richelieu was willing to fight.¹²⁷ Indeed the Cardinal goes so afraid of the France of the future. Furthermore, this treaty broke up the Franco-Spanish alliance, much to the disgust of the latter. See *Calendars, (Venetian)*, XX, 353. See Dumont, etc., V, pt. 2, 462-464, 523, 605-606, VI, pt. I, 69-70, 124-125, 127, 242-243.

¹²¹ Isambert, XVI, 356, Dumont, V, pt. 2, 605-606.

¹²² Richelieu, *Testament Politique*, II, 69-70.

¹²³ Richelieu, *Maximes, d'État*, 815, etc.; *Lettres*, I, 260-267, 294-296.

¹²⁴ Richelieu, *Lettres*, III, 239.

¹²⁵ *Ibid.*, VII, 695.

¹²⁶ *Ibid.*, V, 595-597. Bridges 137.

¹²⁷ Richelieu, *Mémoires*, XXVI, 42.

far as to claim that peace as he sees it would be a true peace for all Christianity.¹²⁸ However, his altruism was not such that this can be entirely accepted. Italy might have been on the territorial waiting list.

Richelieu's relations with the East have been considered.¹²⁹ Again, it is the story of commercial rivalries between England, Spain, Holland and France. Also, the Levant had a certain connection with the Thirty Years' War, in that the Cardinal at one time was afraid of a possible alliance between Turkey and Austria. He even went so far as to advise his ambassador to prevent Turkey from undertaking any negotiations with the enemy.¹³⁰ The alliance was not formed. However, the Cardinal had to neglect his commercial interests in the Orient and permit the Dutch to obtain a good foothold by means of a maritime route around the cape.¹³¹

The Cardinal's interest in Sweden and the North in general was closely bound up in the Thirty Years' War and the question as to the control of the Baltic sea. Of course the aid given by Richelieu to the Swedish King in his attempt to overcome the Hapsburgs has been mentioned by most writers. But the motives which caused Richelieu to do so have been brought forth in rather an unsatisfactory way. The Cardinal did consider that he used this Scandinavian country as a tool to defeat the Emperor. But why? In his *Memoirs* he says that Sweden entered the war on account of the fear of the increasing size of the Emperor's dominions, which threatened her boundaries; and also, to aid the poor northern German states, and preserve freedom of commerce in the Baltic.¹³² Richelieu therefore sent Charnace to Sweden as his representative, who was to tell the King that France was in sympathy with the misery of Germany, and was afraid of the extension of the frontiers of the Empire, whose ambitions had no limits. He desired to furnish troops and money to aid the Swedes, which should be used to maintain the liberty of the Princes, communities, and cities of Germany, and to conserve the security of the two seas, the Baltic, the ocean.

¹²⁸ Richelieu, *Lettres*, IV, 29.

¹²⁹ See Chapter IX.

¹³⁰ Richelieu, *Lettres*, VI, 323.

¹³¹ Levasseur, I, 270.

¹³² Richelieu, *Mémoires*, XXVI, 397.

and their ports. To do this, the forces of the Emperor should be driven out of Germany and their fortresses demolished. Now to assist in this undertaking, France was to furnish money yearly, as long as necessary, and the English, Dutch and Danes were also to aid the Swedes.¹³³ In other words, Richelieu feared the growing universal power of the Empire. The Danes had failed to stem the tide. Now the control of the Baltic was in danger. Richelieu and his allies, in order to stop this threatened economic and political conquest of the entire north by the empire, urged Sweden to sacrifice herself. She was to restore the freedom of commerce on the Baltic and the ocean, which Richelieu desired so much. In order to do so, the German princes must be given control of the coast, and the imperial forces had to be pushed back from their advanced position.

It may be that his relations with the northern states were largely economic. He saw the value of trade in the north and in the Baltic. In 1640 mention is made of the fact that France did not carry on much commerce with Poland, for it was mostly in the hands of the Austrians.¹³⁴ Indeed it is likely that the control of the Baltic was one of the great factors in the Thirty Years' War. At any rate, Richelieu desired the Baltic and its commerce to be free. This desire together with the fall of the Empire was bound to have great economic and political consequences. Richelieu, as shown by his efforts to develop foreign commerce, would have been only too glad to increase the French trade in the north.¹³⁵ He could have accomplished this aim if the Baltic had become controlled only by the Baltic countries with whom he was on friendly terms.

The question which now naturally arises is just what connection did the Thirty Years' War have with Richelieu's policies? Judging by the Cardinal's ambitions in the north which even extended to the east by way of Russia, one can well infer that his extra European policies both commercial and colonial had a close connection with his continental program. Both parts of his administration were intermingled and he realized that success in each was a necessary preliminary if he wanted to develop and increase the political and economic grandeur

¹³³ *Mercure François*, XVII, 469-470.

¹³⁴ Richelieu, *Lettres*, VII, 891-892.

¹³⁵ See Chapter IX.

of France; or looking at it from another point of view, just as the Seven Years' War was closely bound up with the colonial struggle of France and England, the Thirty Years' War decided whether or not the Hapsburgs were to be the continental and colonial powers of the world as against the claims of France, England, and their allies. "The possession and exploitation of the colonies had become an international political question at that time."¹³⁶

Richelieu continually claimed that France desired no territory as a result of the Thirty Years' War, beyond her natural boundaries.¹³⁷ What then was his purpose in entering the war and playing the part he did if one grants him the truth of that statement?

In his Memoirs, he maintains that he sought a permanent peace. He wanted to prevent the ambition of Austria causing her to overcome the weaker German States. Each nation should get what belonged to it.¹³⁸ According to the Cardinal, his policy was to protect the rights of small nations against the growing power of the Empire. He claims that he had no material interest in doing so, but only desired a peace which would be for the benefit of all the allies.¹³⁹ In a letter to the Swiss Cantons, he assured them that he was working only for a permanent peace, and while fighting for it he would not infringe upon their territory.¹⁴⁰ It might be that Richelieu really believed that a victory over Spain and the Empire would benefit the world. We do know that he constantly considered the welfare of France, even before that of any other nation or group of nations, making this the guiding force of his entire administration.

Now carrying this idea of "state interest" to its logical conclusion, it seems quite in harmony with the rest of Richelieu's administration to say that his opposition to the Hapsburgs naturally involved an alliance to overpower them on the Baltic as well as on the Mediterranean. Deschamps has mentioned an anonymous Memoir of 1626, which affected Richelieu to a marked extent and indicates the patriotic policy behind the

¹³⁶ Deschamps, 80-88.

¹³⁷ Richelieu, *Mémoires*, XVII, 403-406.

¹³⁸ *Ibid.*, XXVII, 517-521; *Lettres*, VI, 243.

¹³⁹ *Ibid.*, XXVII, 499-500.

¹⁴⁰ *Ibid.*, XXX, 340.

Cardinal's administration at that time. The end was a commercial and maritime league to weaken Spain on the Mediterranean, and the first step was to establish a navy and increased commerce in that field.¹⁴¹ Richelieu in his creation of a marine accomplished this first step. His attempts to draw England, Holland, Denmark, and Sweden into the war against the Hapsburgs marks the second step taken by Richelieu toward the completion of that plan.¹⁴²

In 1632, Richelieu received from a Hollander by the name of Wilhelm Usselinx, a written plan which proposed an association (commercial and colonial) with Sweden and the German princes. The purpose of it was to drive Spain from the control of seas. The writer gives as his reason for this proposition, that the Hapsburgs of Austria have been the cause of all the trouble for more than a hundred years, and the King of Spain was the chief supporter of that ambitious house. Since the ruler of Spain was powerful only through the money from the American colonies, France should form a company which would destroy Spain commercially and colonially.¹⁴³ Richelieu's efforts to obtain allies against the Hapsburgs indicate that he probably heeded this advice.

But it is evident that Richelieu must have realized the economic importance of an alliance against these powers, for the *Mercure Francois*, in 1628, published the various efforts of Spain and Austria to form a commercial and political alliance against France, England, and Holland. In 1628, one can read an account of the attempts of the Hapsburgs and Poland to control the Baltic by means of a mutual alliance, together with the aid of the Hanseatic cities, especially Lubeck, Danzig, and Hamburg, which cities were all offered great privileges, in return for which they should leave the commercial alliance with Holland and England. The Hapsburgs even tried to get Sweden by offering Prussia to that country in order to separate her from Denmark (which they desired to overrun). They said openly that their purpose was to control the trade and commerce

¹⁴¹ Deschamps, 93-94.

¹⁴² "His treaties with England, Holland and Germany and his defiance of Spain were all economic policies," says M. d'Avenel, "He extended the boundary of France in order for her to be secure." See Richelieu, *Lettres*, I, LXXX.

¹⁴³ Deschamps, 96-99.

of the Baltic and to ruin the Dutch thereby. To do this they planned a strong fleet on the Baltic.¹⁴⁴ It is not strange that Richelieu was so anxious to bring Sweden and the North German states into an alliance with France. He must have realized that France and her allies were threatened by a combination founded by the Hapsburgs, which might cause their political and economic ruin if allowed to continue.

It is no wonder that Richelieu tried to settle the commercial troubles with England and Holland by means of a compromise, in order to meet this great rival. One sees why he neglected the finances as well as commerce more or less. "Spain," says the *Mercure François*, "frankly admitted that in alliance with the Empire, she intended to gain control of the principal commerce of Europe, by means of control of the Baltic, together with the aid of Lubeck, Danzig, etc."¹⁴⁵ In 1624 a council of commerce and an admiralty had been established in Spain and in the Netherlands and the navy was increased. Agents were then sent to the German cities offering a commercial treaty with Spain together with the promise of removing all traces of past devastation in those regions. But this plan failed, as the cities refused to unite against England and Denmark, etc. Also, the Empire was not able to seize the control of the straits from Denmark, as Holland, Denmark, and Sweden all opposed that move. It is interesting to note that the result of all these negotiations only served to unite the German cities more closely to Sweden, Denmark, and Holland.

Richelieu seems to have appreciated the danger of a sort of *zollverein* comprising the Imperial lands, Spain, and the German states, against Sweden, England, Holland and France. This economic union would have resulted in a commercial war which would have been extended to all parts of the world, and so he took steps to prevent its success, by promoting the entrance of Sweden.

Unfortunately for Sweden, and happily for Richelieu, Gustavus Adolphus was killed in the battle of Lutzen in 1632. For in 1633 appeared in the *Mercure François* a very significant account of the proposed political and economic alliance between Sweden and the northern German states, in order to complete the war against the Hapsburgs, and to begin a commercial and

¹⁴⁴ *Mercure François*, XIV, 354, etc.

¹⁴⁵ *Ibid.*, XIV, 355-373.

colonial policy which extended even into the Americas and the East Indies. Gustavus Adolphus planned this in 1626, and Oxenstierna tried to carry it out in 1633.¹⁴⁶ The Swedish leaders were too ambitious, and, as a result, Richelieu became rather cool towards Sweden when he learned about this plan, and the military successes of her great King and leader made it probable that she might be able to succeed.¹⁴⁷ The Cardinal was not guided purely by political ambitions, when he threw France into the war in 1635 and assumed the leadership in the war by this act. It is possible that something besides political considerations caused a protest on the part of France as to the intentions of Austria to control Liège in 1637, with which France maintained important commercial relations.¹⁴⁸ Speaking in general terms, Richelieu definitely desired France to develop not only on the continent but in colonial possessions as well. Austria and Spain both stood in the way of the first step to be taken toward the achievement of that policy. As a result of the Thirty Years' War, Germany became open to the European powers, and the influence of the Empire a thing of the past. France was thus afforded a chance to expand toward her natural frontiers. Spain fell further in national power. The Portuguese revolution in which Richelieu was especially interested left her Empire in a very weak and helpless condition. What a chance for political and economic expansion of France! How unfortunate it was for that country, that her minister was unable to live long enough to complete the economic, as well as the political, side of his administration, which he had so well begun!

Thus it was the result of the Thirty Years' War which decided the first question as to who should control the commerce and the colonial projects of the world. Richelieu helped to frustrate the claims of Spain and the Empire along these lines. Who

¹⁴⁶ *Mercure François*, XIX, 468-485. In 1630, Gustavus Adolphus arranged a treaty of commerce between Danzig and Sweden. See Dumont, etc., V, pt. 2, 598-599.

¹⁴⁷ Wakeman, 94. In 1626, Gustavus Adolphus persuaded by Usselinx, an Amsterdam merchant, decided to form the Swedish West India Company and establish settlements in so-called "New Sweden." Oxenstierna continued the policy and in 1638 established a settlement in the state of Delaware. See Tyler, L. G., *England in America* (American Nation Series), N. Y. 1904, 295-296.

¹⁴⁸ *Mercure François*, XXII, 55

among the allies would be the leader in the economic and political affairs of the time, was a question of the future. As was said before, Richelieu knew that England was the great power that France would have to contend with for control of the sea, after the ambitions of Spain in that direction had been settled. His external policy was his method of preparing for this coming emergency.

In the last place, it does not seem that due credit has been given Richelieu in his conduct of the Thirty Years' War. The very fact that he was able to throw other countries against the enemy by furnishing them with money, certainly indicates his genius. For while he was doing this, he tried to settle internal affairs and develop his external policy, so that after the war France would be able to assume the leading part in European affairs, because of her own great economic and political strength and grandeur. "All this was a matter of prudence," he says, "for by keeping your enemies occupied with your allies, you have time not only to furnish them money, but to save some for yourself. However, when your allies really need you, then it is an act of wisdom and courage to come to their aid."¹⁴⁹

It certainly would seem that Richelieu followed out to the highest degree his principle of placing the interest of the state first, in his conduct of the Thirty Years' War. After all, what he desired was the political and economic supremacy of France in Europe. In order to achieve this purpose he forgot commercial rivalries, made allies, and then pushed them into the war, and finally at the opportune time entered it himself. When he died, international relations were shaping themselves in such a way that he could have turned his undivided attention to the economic development of his nation, and to the questions which would have arisen out of his attempts to develop such phases of his government as colonization. Of course England was a problem for the future. But what would the future have brought if the Cardinal had lived? At any rate the English and French colonial struggle seems to have been the natural outcome of Richelieu's administration. Imperialism had begun.

¹⁴⁹ Richelieu, *Mémoires*, XI, 307; *Testament Politique*, I, 45.

CHAPTER XI

CONCLUSION

The early death of Richelieu was certainly an unfortunate event for the development of France, for his career ended at a time when he was planning to carry to final completion the magnificent political and economic program which he had begun. It was doubly unfortunate because of the fact that his successor, while he was able to carry out the external political phase of Richelieu's administration, nevertheless failed to aid in any way the general economic and internal political ideas promulgated by the Cardinal. As a result, whatever Richelieu accomplished in an economic way was neglected until Colbert came along, and by that time France had lost to a certain extent her great opportunity. One writer suggests that if a man strong in both political and economic affairs had succeeded Richelieu, no doubt the final disappearance of feudalism in the 18th century would not have been delayed. The French Revolution would probably have come; but the horrors of the French Revolution would have been spared. Aristocracy and hereditary monarchy would have been swept away none the less, and the republicanism of modern France would have arisen, as it has arisen in their place, but the substitution would have taken place without convulsions and without bitterness. "The question after his death is whether the monarchy will stay with the Third Estate or will turn on them and be conservative. In the first case, there will be the peaceful establishment of the modern era, and in the second, a reign of terror and war."¹ The second choice was made, and it is indeed unfortunate that the death of this great man became one of the forces leading to the great catastrophe of French history.

Colbert, who succeeded Mazarin, was able to build upon the foundation laid by Richelieu. "One must admire," says Gouraud, "the security of principles, when after twenty years of

¹ Bridges, 40-41

civil trouble and debasement of nearly all commerce the foundation laid by the latter great man was found nearly intact, and it was upon this that his economic successor built the great commercial grandeur of France."² One can easily confirm the truth of this statement by consulting the achievements of Colbert. Indeed to Colbert alone has been given the glory of having made France for a brief period the greatest colonial power of modern times. "In this," says one writer, "he showed himself to be the docile son of Richelieu. He borrowed from him the method of forming companies with privileges and monopolies. The contracts of 1664 were formulated in the same manner as those of the time of the revolution. Indeed the patents of the company of the 'one hundred associates' and the company of the 'West Indies,' seemed to have been written by the same hand."³ Colbert completed the colonial conceptions of Richelieu. The latter had placed conquest and settlement of the new lands in the first place. He considered the honor and welfare of the Kingdom, and its influence in Europe. Colbert, minister of finances, took upon himself the task of increasing the richness of the country, accomplished by means of colonization, which was an economic effort. He put in the first place the commercial interests, which had remained in the second place according to the Cardinal's conception.⁴ One might go on and show just in what way Colbert built upon the economic foundations laid by Richelieu with regard to finances, the marine, industry, etc., but it suffices to say that the accomplishments of Richelieu served as a worthy basis for the brilliant protective policy of Colbert. It is indeed unfortunate that the continental policy of Louis XIV should have prevented the carrying out of the peaceful economic ideas set forth in the *Testament Politique*, which Richelieu left to posterity.

The keynote of Richelieu's administration from the economic point of view is mercantilism. This study has tried to point out the fact that the great Cardinal was fundamentally a man of that school of thought. Whether he obtained his ideas from Sully, Henry IV, or the first French economist Montchrétien, is not certain, but it is evident that the motive behind

² Gouraud, I, 198.

³ Deschamps, 144-146.

⁴ *Ibid.*, 146.

his administration was mercantilistic as illustrated by his policy of political and economic centralization. Practically all of his actions can be traced back to that belief. For example, in his efforts to create the state, he looked at all classes from the viewpoint of the welfare of the nation. In this respect his conflict with the Huguenots over the salt beds around La Rochelle is a splendid example of his efforts to centralize even the economic side of the government. His financial program although weak was guided by ideal state building. This was also true of his foreign and domestic commercial policies as well as his colonization schemes and his attempts to create a marine. The welfare of the nation was behind all of them. As to his continental policy, Richelieu desired to overthrow the Hapsburgs, not only for political but for economic reasons as well. That is, to the Cardinal, the downfall of the Hapsburgs was the first step in the colonial and commercial as well as the political aggrandizement of France. His relationship with all nations was centered around this idea and consequently the struggle with England over control of the Huguenots, and the salt region, is only interesting in that it shows that the Cardinal was aware of the potential economic forces working within his own land, and his future rival, England. It is granted that Richelieu might have been actuated by other motives in his administration, but one must concede that the policy of a great mercantilistic state around which all his economic policies center is one of the fundamentals of his administration. For after all, a strong state politically, a good economic foundation, and an era of peace in which work could be accomplished, was the ideal of Richelieu, and no correct conception of his career can be obtained, unless this program is taken into account.

That he fully intended to develop his country in the time of future peace is clearly brought out in his *Testament Politique*, which was written toward the last of his career when he knew that death was going to prevent the carrying out of his plans. "Just as his Memoirs were the accomplishments of the past, so his *Testament Politique*," he says, "would be the guide for the future."⁵ Then in concluding the first part of his great work,

⁵ Richelieu, *Mémoires*, XI, 269-271. (Includes introduction to the *Testament Politique*, and part one.) *Testament Politique*, Introduction, I, 1-5.

he sums up the keynote of his entire administration when he says; "Up to the present the deeds of your Majesty have been related. I certainly believe that they will end happily if they are followed by a repose, which will give the means by which the state may be heaped up with all kinds of advantages, gains, etc." ⁶ "Your Majesty being naturally of a tender constitution, not very healthy, of restless impatient humor, especially when you are with the army, of which you take the leadership, I should think myself guilty of a crime, if I did not make it my humble request for you to avoid war for the future, as much as possible; which I do upon this basis, that the levity and inconsistency of the French, can only be vanquished by the presence of their master, and that your Majesty cannot, without exposing yourself to ruin, fix upon so lasting a design, nor consequently expect a good success from it. You have shown your valor and military power sufficiently to think of nothing like that for the future, but to enjoy that peace and tranquillity which you have acquired for the Kingdom by your labor, being in a position to defend yourself against all those who, contrary to public faith, would offend you anew." ⁷ Peace was the final goal toward which the Cardinal had worked. And even though he admitted the heavy cost in treasures and suffering, yet he believed that the ideal was worth the efforts and the privations.

Like many great men, Richelieu made countless enemies in his attempts to carry out his policies. "But," says Bonnefon, "in contact with the logical and firm policies of the Cardinal, the French people began to take notice of the true interests of the country and the public, and if it had at first been distrustful of the minister because of the brutality of his plans — perceived now the farsightedness and the justice of the policies which he conceived and was carrying out." ⁸ In this regard the beautiful letter of his contemporary Voiture is significant. The latter praises the farsightedness of the Cardinal's costly military policy, as being a necessary prerequisite for the future wealth and growth of the country. "One must admit," he says, "that instead of ruining France, he has saved her millions by simply taking La Rochelle, which has been in a state of constant revolt and thus

⁶ Richelieu, *Mémoires*, XI, 394-350; *Testament Politique*, I, 60.

⁷ Richelieu, *Testament Politique*, I, 196-197.

⁸ *Société Française du XVIII^e Siècle*, 32.

a constant expense.”⁹ He then goes on to justify the part taken by Richelieu in the Thirty Years’ War. “If the war ends, as it appears to indicate, in a victory, Richelieu will then find the means of winning the admiration of all. Being as wise as he is, he has realized after so many experiences, what is best; and will turn his attention toward creating in that state the most flourishing of all, after having made it the most formable. He will make evident an ambition which is the most beautiful of anything which can fall into the views of mankind, namely, of creating in France the best and most loved of Kingdoms and not the most feared. He knows that the most true and noble conquests are those of the heart and the affection; and just as a plant is barren which gives shade and no fruit, so will he enjoy the fruits with which peace is crowned. There is not so much glory in extending the limits of the land as in diminishing the *taille*. Richelieu realizes this fact. He also knows that there is less glory in overcoming a hundred thousand men, than in putting twenty millions at their ease and security. Also, this great spirit who has only been occupied with the means of furnishing money for the war and of raising men, taking villages and winning wars, will occupy himself henceforth, only in establishing repose, riches, and abundance. Instead of being a leader in war, he will lead in the advancement of the arts. He will make new edicts to regulate luxury and establish commerce. Large vessels accustomed to carry arms will bear merchandise, and hold the seas free from pirates, etc. Then the people will admire him and the middle classes will sing his praises. . .” This is a rather enthusiastic eulogy of the Cardinal, but it is interesting as indicating the growth in sentiment in his favor among the intellectual French people. They began to see the ultimate purpose of Richelieu’s administration; that war was a necessary evil, accepted only for the sake of better conditions under future peace.

A study of Richelieu’s life leads to the conclusion that he was an economic statesman and that he was one of the unconscious economic and political founders of the French mercantilistic state. Yet he was not an extreme advocate of the doctrine of mercantilism, for one finds that he differed radically from other influential men of his age. The extreme mercantilistic view held for its fundamental belief that money is wealth. It follows that

⁹ Voiture, *Oeuvres*, 2 vols., Ed., M. M. Ubbicini, Paris, 1855, I, 271-279.

a nation should have a favorable balance of trade in order to keep gold and silver within its boundaries, and should never let them go out of the land, because it is the possession of specie that makes the state strong. When the Cardinal took up the work of his administration, he believed more or less in this doctrine, which was commonly followed and obeyed at that time. But as he began to study the economic side of the question; as he was confronted with commercial conditions in which the fallacies involved in the idea were brought to light in various ways, he gradually came to the conclusion that this theory was wrong, and admitted it. In referring to this change of economic doctrine, M. Masson says that the other French officials still believed in the theory, but Richelieu changed completely to the other side. This change is a very important event in the economic history of that time, because it tends to locate in the age of Richelieu the transitional stage of development from the mercantilistic doctrine to the belief in free trade. Just what was the influence of the Cardinal's ideas upon those who came after him, presents a different historical and economic problem. That Richelieu was not strictly a follower of either the old or new school is evident from a study of his life, although the main outlines of his governmental policy are based largely upon the mercantilistic conception of the strong state. He may be regarded as an unconscious medium whereby the old mercantilistic views finally became merged into the ideas which finally led to the doctrine of free trade. For example, one of his letters illustrates very well the modern view he possessed in regard to duties on imports. "If one must endure," he says, "the heavy import duties which foreign lands put upon our goods which enter their lands, and upon those which come to us, let us charge such duties on their goods and raise them in proportion as the foreigners raise their duties on us."¹¹ Thus he believed in the system of retaliation, which is more or less modern. As a result, it may be asserted that Richelieu deserves more consideration upon the economic side than has hitherto been given him. The Cardinal may indeed

¹⁰ *Histoire du Commerce Française dans le Levant*, 149.

¹¹ Richelieu, *Lettres*, II, 332. Richelieu desired to make France a strong commercial nation and "in the spirit of reciprocity he gave to foreign merchandise the same rights as they gave to French goods." See Lavissee et Rambaud, *Histoire Générale* V, 368.

be regarded as a forerunner of the exponents of the modern school of political economy.

"The deeds of great men live after them." A man is truly great if he has accomplished something which has a living force in times after his own. All accounts of Richelieu's life have brought out clearly the importance of his political work, but have failed to give similar attention to the economic phase of his career. This treatise has endeavored to take up the internal and external commercial policies of the Cardinal, and has thus limited itself to an interpretation of his economic accomplishments. It has tried to establish that Richelieu, as measured by his activities in this particular field of his career, comes up to the requirement as to what constitutes a great man. Two general contributions to economic thought and practice entitle him to this position. In the first place, he made an addition to the theoretical side of economics by taking a stand in favor of increased freedom of trade and opposing the extreme mercantilistic doctrine. This unconscious contribution made by the Cardinal may have influenced the development of the modern doctrine of free trade. In the second place, his ideas as to "state building," by means of a marine, colonization, and commerce in general, have formed the basis, as has been said before, of most activities in this particular field ever since.

In the last place, Richelieu's political achievements, largely accomplished with the intention of obtaining a peace which would afford an opportunity for France to expand in an economic way, are essentially modern. Traces of his ideas can be found after nearly three centuries in the economic policies of modern France, and of other nations. His greatness cannot be limited to the political sphere, but clearly extends with approximately equal credit into the field of practical economics.

Ils chantent quel fut ton mérite

Quand au gré de vos matelots

Tu vainquis les vents et les flots.¹²

¹² This poem was written by Jean de Chapelain (1595-1624), and appeared under the title: *Ode à Monseigneur le Cardinal Duc de Richelieu*. (Paris, Jean Camusat, 1633). See De Brienne H. A., *Mémoires*, Paris, 1916, I, 241-243.

Chapelain ranks among the intellectual men of that age and was a member of the French Academy. The above poem is considered his best.

Et domptas l'orgueil d'Amphitrite.
Quand votre commerce affoibli,
 Par toi, puissamment rétabli.
Dans nos hâvres déserts ramena l'abondance
Et que surcent vaisseaux maîtrisant les dangers
Ton nom seul aux Français redonna l'assurance
Et fit naître la crainte au coeur des étrangers . . .
 Ils chantent tes conseils utiles
 Par qui malgré l'art des méchants
 La paix reflleurit dans nos champs
Et la justice dans nos villes
Ils disent que les immortels
De leur culte et de leur autels
Ne doivent qu'à tes soins la pompe renaissante,
Et que ta prévoyance et ton autorité
 Sont les deux forts appuis dont
 l'Europe tremblante
Soutient et raffermir sa foible liberté.

APPENDIX A.

BIBLIOGRAPHY

The following works are the primary and secondary sources consulted in the preparation of this study. In each group they are placed in the order of their importance.

GROUP I

Bibliographies

1. Molinier, Augusta Émile, and others, *Les Sources de l'Histoire de France depuis les Origines Jusqu'en 1815*, 12 vols., See Vols., XI, XII. Paris, 1913.
2. Monod, Gabriel Jacques, *Bibliographie de l'Histoire de France*, Paris, 1888.
3. Franklin, Alfred, *Les Sources de l'Histoire de France*, Paris 1877.
4. Delong, Jacques, *Bibliothèque Historique*, 5 vols., Paris, 1768-1778.
5. Langlois, Charles Victor, et Stein, H., *Les Archives de l'Histoire de France*, 3 vols., Paris, 1891 [1893].

Of the five bibliographies, the first one has been found most valuable in the preparation of this study. It covers the field with respect to geographies, general histories, memoirs, and letters. Monod's work is a single volume in which is found a fairly good limited catalogue of sources and works relating to the history of France from its origin down to 1789. It is arranged chronologically and by classification. The next two bibliographies are older works and thus not so important as the ones just mentioned.

Good brief bibliographies concerning this subject may be obtained by consulting (a) Lavissee, E., *Histoire de France*, Vol., VI, 2 partie, Ch. XI., (b) Lavissee et Rambaud, *Histoire Générale*, Vol., V, Ch. VII., (c) *Cambridge Modern History*, Vol., IV, Ch. IV.

GROUP II

Original Sources

1. Richelieu, A. J. du Plessis, Cardinal, duc de, *Testament Politique*, 2 partie, Londres, La Haye, La Februre, 1770. See Appendix B.

2. Richelieu, A. J. du Plessis, Cardinal, duc de, *The Political Will and Testament of that Great Minister of State, Cardinal Duke de Richelieu*, London, 1695.

This interesting old English translation is found in the Harvard College Library, made by some unknown men of the age of Louis XIV.

3. Richelieu, A. J. du Plessis, Cardinal, duc de, *Mémoires du Cardinal de Richelieu* (M. Petitot, editor), Vols. X-XXX, Foucault, Libraire Rue des Noyers, No. 37, Paris, 1821-1829.

These memoirs of Richelieu include the years 1610-1638. They are the source of valuable information with respect to his economic ideas. Indeed, in one sense of the word, they are not memoirs, but are a collection of notes sent to him by his agents, advice from his counsellors and, finally, his own ideas either jotted down by himself or by his secretaries, and have been used with this in mind. The authenticity of the memoirs is generally accepted, although before the Academie des Sciences Moral et Politiques, on January 7, 1921, M. Louis Batiffol maintained that the Memoirs of Cardinal Richelieu were not authentic, being the work of two compilers, who used Richelieu's papers shortly after his death. Therefore this work must be used with that idea in mind. [See L. Batiffol, "Les Faux Mémoires du Cardinal de Richelieu" (*Revue des Deux Mondes*, April 15, 1921)].

4. Richelieu, A. J. Plessis, Cardinal, duc de, *Lettres, Instructions Diplomatiques, et Papiers d'État*. Ed., Georges, Comte d'Avenel (Documents inédits sur l'histoire de France), 8 vols., Paris, 1853-1877.

A valuable collection, including practically all of Richelieu's correspondence. Unfortunately the letters left out seem to be the ones pertaining to commerce. The editor remedies matters to a certain extent by listing these letters and summing up their main themes. Volume

one of this series contains a splendid introduction by the author.

5. Richelieu, A. J. du Plessis, Cardinal, duc de, *Maximes d'État et Fragments Politique du Cardinal de Richelieu*, Ed., Gabriel Hanotaux, (Collection des documents inédits sur l'histoire de France, vol., LI), Paris, 1880. See Appendix B.
6. *Mercurie François, le*, 25 vols., (1605-1644), Paris, J. Richer [etc].

This work is not a journal but is an annual history of which the first volume embraces an account of the events which took place in Europe from 1605-1611. The collection of twenty-five volumes is one of the best sources for the study of the history of that period. Being controlled by the government, it sets forth the views of the administration. There is a strong probability that Richelieu acted as editor in some degree and contributed a number of articles to it.

7. Isambert, François André and others, *Recueil Général des Anciennes Lois Françaises depuis l'an 420, jusqu'à la Revolution de 1789*, 29 vols., See vol. XVI, Paris, 1829.
8. Sourdis, Henry de, Archbishop of Bordeaux, *Correspondence*, Ed., Eugène Sue. (Collection des Documents inédits. . . LVII) 3 vols., Paris, 1839.

This is the best source for information concerning Richelieu's marine activities. M. Sue has written an excellent introduction, dealing with the state of the marine under the Cardinal.

9. Montchrétien, Antoyne de, *L'économie Politique Patronale Traicté de l'Oeconomie Politique . . .* Ed., Th. Funck-Brentano, Paris, 1889.

This economic work is especially important, because of the fact that this is the first French work of that nature, and also because it sets forth the basis of many of Richelieu's economic ideas, whether he was acquainted with it or not. Written in 1615, it is our first real evidence as to the rise of economic ideas in France.

10. *Calendar of State Papers and Manuscripts*, (Domestic series), (1625-1642), 19 vols., London, 1858-1887. Colonial, (1574-1660), vol., I. London, 1860.

11. *Calendar of State Papers and Manuscripts*, (Venetian series), Vols. XVIII-XXI, London, 1912-1916.

An important source for a study of the relations between England and France during the administration of Richelieu, both from the English and the Venetian, or neutral, point of view.

12. Voiture, Vincent de, *Oeuvres*, 2 vols. Ed., M. M. Ubicini, Paris, 1855.

This work contains a very interesting eulogy of the Cardinal by a contemporary, with much information in regard to economic matters.

13. Richelieu, A. J. du Plessis, Cardinal, duc de, *Journal de Monsieur Cardinal Richelieu*, (1630-1631), Amsterdam, 1864.

Not very valuable so far as this study is concerned.

14. Molé, Mathieu, *Mémoires* (Société de l'Histoire de France), 4 vols., See vols. I-II. Paris, 1855-1857.

Mathieu Molé was a member and later president of the *Parlement* of Paris. These memoirs are therefore important in that they give one an insight into the ideas of Richelieu's opponents. They are also valuable in an economic study of the period.

15. Beaurepaire, Charles Marie de, *Cahiers des États de Normandie* (1610-1666), (Société de l'Histoire de France), 3 vols., See vols. II-III, Rouen, 1876-1879.

A good source for the economic study of the period.

16. Talon, Omer, *Mémoires*, Petitot, 2^e serie, Vols. LX-LXIII, See vol. LX, Paris, 1819-1829.

Omer Talon was an *avocat in Parlement* who in 1641 became *avocat général*. He was a constant opponent of Richelieu, and therefore his writings are valuable as regards disputes which arose between the *Parlements* and the Cardinal. His work is not so much a memoir as a compilation of speeches, extracts from the registers of *Parlement*, etc. There is much material on the economic side.

17. Brienne, Henri Auguste, Comte de, *Mémoires de Comte de Brienne*. (Société de l'Histoire de France), Vol. I, Paris, 1916.

18. Bassompierre, François, Maréchal de, *Mémoires*, (So-

- ciété de l'Histoire de France), 4 vols. See vols. III-IV, Paris, 1870-1877.
19. Goulas, Nicholas, *Mémoires*, (Société de l'Histoire de France), 2 vols. See vol. I, Paris, 1879.
20. Tillieries, Leveneur, Comte de, *Mémoires*, Paris, 1863.
Tillieries was ambassador to England in 1619 and his memoirs furnish a good source for a study of Anglo-French relations.
21. Dumont, Jean, *Corps Universelle Diplomatique du Droit des Gens*, (800-1731), 8 vols. Supplement 5 vols. See vol. V, pt. 2, vol. VI, pt. 1. Amst, et La Haye, 1726-1739.
This work contains treaties of alliance, peace, commerce, etc., from 800 to 1731. It is a valuable source.
- The following sources, while not of much value to this study, yet are important in obtaining an all around conception of the accomplishments of the great Cardinal.
22. La Force, Jacques Nompars, *Mémoires de La Force*, 4 vols., Paris, 1843.
A faithful "maréchal" of Louis XIII.
23. Rohan, Henri, Prince de Léon, *Mémoires*, Petitot, 2^e serie, Vols. XVIII-XIX, 1819-1829.
Herein one finds the Huguenot side of the conflict with Richelieu.
24. Orléans, Gaston, duc de, *Mémoires*, Petitot, 2^e serie, Vol. XXXI, 1819-1829.
25. Fontenay-Mareul, François, Marquis de, *Mémoires*, Petitot, 1^e serie, Vols. LI-LII, 1819-1829.
26. Souvigny, Jean, Gangnieres, Comte de, *Mémoires*, 3 vols., See vols., I-II, Paris, 1906-1909.

An excellent account of the political accomplishments of Richelieu and Mazarin.

GROUP III

Secondary Works

A. LIVES OF RICHELIEU

1. Perkins, James Breck, *Richelieu and the Growth of French Power*, (Heroes of the Nation Series), New York, 1900.
A good general account of his life.
2. Lodge, Richard, *Richelieu*, London, 1896.

This book is of especial interest because the author did not consider the *Testament Politique* of Richelieu as authentic and thus did not use it in the preparation of his work. See his appendix C.

3. Zeller, Berthold, *Richelieu*, London, 1884.
4. Fagniez, Gustave Charles, *Le Père Joseph et Richelieu*, 2 vols., Paris, 1894.
5. Price, Eleanor C., *Cardinal de Richelieu*, New York, 1912.
Remarkable for its neglect of the economic side of Richelieu's administration.

B. GENERAL HISTORIES WHICH COVER THE PERIOD

1. Martin, Henry, *Histoire de France*, 6 vols., Paris, 1861.
2. Dareste, Antoine, *Histoire de France*, 9 vols., Paris, 1884-1885.
3. Bazin, Anäis de, *Histoire de France sous Louis XIII et sous le Ministère de Mazarin*, ed. 2, 4 vols., Paris, 1846.
4. Ranke, Leopold, von, *Französische Geschichte*, Vols. II, III. *Sämtliche Werke*, IX, X, Leipzig, 1876-1877.
5. Lavissee, Ernest, *Histoire de France*, 9 vols. See vol. VI, Paris, 1896.

The best French account of this period.

6. Anquetil, Louis Pierre, *Histoire de France*, 14 vols. See vols. X, XI, Paris, 1805.
7. Kitchin, George William, *History of France*, 3 vols., Oxford, 1892-1896.
8. Michelet, Jules, *Histoire de France*, 16 vols. See vol. II, Paris, 1869.
9. Macdonald, John Ronald, *A History of France*, 3 vols. See vol. II, New York, 1915.

C. HISTORIES OF POLITICAL ECONOMY WHICH DEAL WITH THE PERIOD

1. Blanqui, [Jérôme Adolphe], *History of Political Economy*, New York, 1880.
2. Ingram, John Kells, *History of Political Economy*, London, 1904.
3. Schmoller, Gustave, *The Mercantile System*, New York, 1902.
4. Seeley, John Robert, *The Expansion of England*, London, 1891.

The main criticism of these works would seem to be that

they reveal a universal neglect of the economic side of the administrative career of Richelieu.

D. HISTORIES OF FRENCH COMMERCE

1. Bonnassieux, Louis Jean Pierre, *Les Grandes Compagnies de Commerce*, Paris, 1892.

An excellent account of the French colonial and commercial projects during the age of Richelieu.

2. Deschamps, Léon, *Histoire de la Question Coloniale en France*, Paris, 1891.

A unique work covering the colonial efforts made by France in the seventeenth and eighteenth centuries.

3. Gouraud, Charles, *Histoire de la Politique Commerciale de la France et son Influence sur le Progrès de la Richesse Publique*, Paris, 1854.

This work is distinguished not only for the abundance of facts, but for the novelty and profundity of its reviews and ideas.

4. Levasseur, Émile, *Histoire du Commerce de la France*, 2 vols., Paris, 1911-1912.

An excellent work. M. Levasseur has the ability to pick out the essentials from the non-essentials.

5. Pigeonneau, H[enri], *Histoire du Commerce de la France*, 2 vols. Paris, 1889.

One of the best works covering this phase of French history. The author sees clearly the economic importance of the seventeenth century.

6. Guénin, Eugène, *Histoire de la Colonisation Française dans la Nouvelle France*, Paris, 1896.

7. Masson, Paul, *Histoire du Commerce Français dans le Levant en XVII^e Siècle*, Paris, 1896.

8. Masson, Paul, *Histoire des Etablissements et du Commerce Française dans l'Afrique Barbaresque (1560-1793)*, Paris, 1903.

10. Norman, Charles Boswell, *Colonial France*, London, 1886.

This work is not very reliable as the author makes a number of mistakes with regard to important French dates in French colonial history.

11. Weber, Henry, *La Campagne Française des Indes, (1604-1870)*, Paris, 1904.

E. FINANCIAL HISTORIES OF FRANCE

1. Bailly, Antoine, *Histoire Financière de la France*, 2 vols., Paris, 1830.
2. Bresson, Jacques, *Histoire Financière de la France*, 2 vols., Paris, 1843.

Both works contain a fair estimate of the financial administration during the period of Richelieu.

3. Forbonnais, François, F. de, *Recherches et Considérations sur les Finances de France*, 2 vols., Basel, 1758.

F. GENERAL WORKS ON THE PERIOD

1. Wakeman, Henry Otley, *European History (1598-1715)*, New York, 1916.

A standard brief general work in English for this period.

2. Caillet, Jules, *L'Administration en France sous le Ministère du Cardinal de Richelieu*, Paris, 1857.

A very conscientious and complete work, but a little confused and apt to neglect the economic phase of the subject.

3. Avenel, Georges, Comte de, *Richelieu et la Monarchie Absolue*, 4 vols., Paris, 1859.

The best work concerning the Cardinal from an economic point of view.

4. Bridges, John Henry, *France under Richelieu and Colbert*, Edinburgh, 1866.

A combined economic and philosophical survey of France under Richelieu and Colbert. An extremely valuable book.

5. *Cambridge Modern History*, 13 vols., and atlas. Cambridge, 1902-1912. See vol. IV, Ch. IV, "Richelieu."

6. Lavissee, Ernest, et Rambaud, Alfred, *Histoire Générale*, 12 vols., Vol. V, Paris, 1893-1901.

7. Lavallée, Théophile Sébastien, *Histoire des Français*, 6 vols., Paris, 1861.

8. (a) Lavissee, Ernest, et Rambaud, Alfred, *Histoire de la Civilisation Française*, 2 vols., Paris, 1897-1898.

- (b) Rambaud, Alfred, *Histoire de la Civilisation Française*, 2 vols., Paris, 1898.

9. Bonnefon, Paul, *Société Française du XVII^e Siècle*, Paris, 1903.

10. Gasquet, Amédée Louis, *Précis des Institutions Politiques et Sociales de l'Ancienne France*, 2 vols., Paris, 1885.
11. Avenel, Georges, Comte de, *La Noblesse Française sous Richelieu*, Paris 1901.
12. Avenel, Georges, Comte de, *Prêtres, Soldats, et Juges sous Richelieu*, Paris, 1907.
13. Normand, Charles, *La Bourgeoisie Française au XVII Siècle, 1604-1661*, Paris, 1908.
14. Mims, Stewart Leas, *Colbert's West India Policy*. New Haven, 1912. See Chapter I.
15. Parkman, Francis, *The Jesuits of North America*, Boston, 1905.
16. Hanotaux, Gabriel, *Origine de l'Institution des Intendants des Provinces*, Paris, 1884.
17. Michaud, Joseph François and Louis Gabriel, *Biographie Universelle*, 45 vols., Paris, 1842-1865. See Vol. XXXV.
18. Montague, Francis Charles, *History of England (1603-1660)*, in *Political History of England*, VII, New York, 1911.
19. Trevelyan, George Macaulay, *England under the Stuarts*, New York, 1910.
20. Cheyney, Edward Potts, *A History of England*, New York, 1914.
21. Braeq, Jean Charlemagne, *France under the Republic*, New York, 1910.
22. Griffet, Henri, *Histoire du Règne de Louis XIII*, 3 vols., Paris, 1758.

APPENDIX B

THE AUTHENTICITY OF THE TESTAMENT POLITIQUE

Because of the fact that this study is based largely upon the writings of Cardinal Richelieu and especially upon his *Testament Politique*, it seems best to discuss the problem of the authenticity of the latter work, which has been a perennial question ever since it was first published. That it belongs among the most interesting memorials of French history in the 17th century, is shown by the great warmth with which scholars have fought over it. "But," says Boehm, "such was the fate of this work that its authenticity, and therewith its value or worth must be placed in doubt because of a succession of circumstances, not yet cleared up. Thus it has been under suspicion until now. An important individual has opposed the treatise and since then various teachers have exerted their ability to defend or approve it. Indeed, few works of the world's literature have been subject to such a searching criticism."¹

The *Testament Politique* was written sometime between the years 1638 and 1642. D'Avenel says that Richelieu continued his memoirs as far as 1638, and seeing that he could not finish them, wrote the former work.² It is divided into two parts, the first of which gives a short account of the reign of Louis XIII up to that time, according to Richelieu's interpretation. The second part is concerned mostly with matters of administration, such as colonial development, the marine, finances, etc. Indeed its contents demonstrate that in writing his *Testament Politique*, Richelieu desired to leave it as a guide for the King after his own death, when the coming peace would afford him a chance to build up his state. Also, it was to serve as a vindication of the Cardinal's administration, which had been grossly attacked by many enemies.

¹ Boehm, Introduction, 1.

² Richelieu, *Lettres*, VIII, 383.

The personal nature of the work accounts for the fact that it was not published, or known at first by the public at large. Indeed, only a few people were aware of its existence. Yet the fact that mention was made of it in a funeral oration upon the Cardinal, which has been found in the British Museum, certainly would indicate that some were acquainted with the treatise and its important contribution.³ Furthermore, the writer of the oration bemoaned the fact that the King had not published his copy of the *Testament Politique*. This showed that the King had a copy which he was keeping secret, and explains the late public appearance of the work. However, since neither the King nor Richelieu left direct evidence that a copy was presented to the former and was to be kept secret, one cannot be certain as to the precise reason for the late appearance of the work. "The probabilities are," says one writer, "that it was considered so important that it was reserved for the King alone and thus its publication was delayed."⁴

There are a number of copies of the *Testament Politique*. Among these are four important manuscripts, the first of which is found in the French department of foreign affairs. It was probably brought over in 1705 with the papers of Richelieu as a whole, which were sent there by permission of Louis XIV.⁵ The second manuscript was found in the Sorbonne, which institution obtained it from a former secretary of the Cardinal. The third was found in the possession of M. Frudaine, councillor of state and of the royal council. The fourth belonged originally to M. de Saint-Palaye. The last two were manuscripts found in the hands of private individuals and are thought to be copies of the manuscript discovered in the department of foreign affairs. Thus the first two can be regarded as original, since one was found among the papers of the Cardinal, and the other given by his secretary who recognized its authenticity.

In spite of the existence of these copies of the interesting work, the historian Aubery, who took upon himself the task of writing the life of the Cardinal, failed to find it among the papers of Richelieu, which were in the possession of his niece the Duchess of Aiguillon. He went ahead and published in

³ Boehm, 15.

⁴ *Ibid.*, 16-17.

⁵ Richelieu, *Mémoires*, XI, 267-268.

1678 a work entitled *le Traité de la Regale*. But when the *Testament* appeared about ten years later, the latter work proved that his conception of Richelieu's ideas with regard to the royal prerogative was wrong. Indeed he found his reputation as an authority on the life of the Cardinal to be injured, and as a result it was a question of either his downfall or that of the *Testament Politique*, and of course he favored the fall of the latter.

Thus the fight started. "Aubery in his history of the Cardinal Mazarin," says Boehm, "took a determined stand against the authenticity of the work, but his criticism was purely personal and not scientific."⁶ However, his failure to find the manuscript gives evidence of the effort made to keep the work secret as a personal possession of the King. No apparent effort was made between 1642 and 1687, to make the public aware of it. Nevertheless, once it got into print, its intrinsic importance made it an object of eager debate, and the question of its authenticity became a live one.⁷

Next comes the great debate of 1749 between the historians Voltaire and Fonecemagne with regard to the last writing of the Cardinal. Voltaire hated Richelieu from the very first and saw a chance to pay his respects to the departed churchman.

At this point one must take into account the attitude of certain groups toward Richelieu as largely influencing the secrecy of the *Testament* and accounting for the violent opposition to it. Sympathy could not be expected for the Cardinal or for his work from such opponents as the nobles and the *Parlement* of Paris. Indeed, it is surprising that they permitted the work to appear at all. It certainly did not suit their political ambitions, and therein lies the political explanation for the suppression of and the opposition to the great book.

On the other hand, Richelieu left some strong friends especially among the intellectual class. Gabriel Hanotaux, for example, may be cited as the greatest living exponent of the true greatness of the Bishop of Luzon. It is due to such men that a reliable account of the life of Richelieu can be obtained at present.

Voltaire made an unauthentic, prejudiced attack which was

⁶ Boehm, 18.

⁷ *Ibid.*, 19.

answered by Foncecagne in a clear, fair, and concise manner. "In fact," says Boehm, "he knew how to return every thrust with absolute certainty and effect."⁸ However, as the dispute was a personal one, it is not worth considering except in so far as the motives behind it aid in an explanation of the results obtained. The opposition to Richelieu, in a political and personal sense, found a welcome outlet in numerous attacks on his last work. For example, Voltaire's second assault upon the *Testament* was brought about more from personal enmity against certain Amsterdam publishers than from a desire to oppose the *Testament Politique*. He was determined to "show up" these publishers as being frauds, and picked upon the last contribution of the Cardinal as a means by which this was to be done. The result was a torrent of sarcastic abusive personal remarks which really meant nothing against the book itself.

Opposition developed to the attacks of Voltaire, and the *Testament Politique* had many defenders. Foncecagne in a letter, made a reply which put the former on the defensive. But nothing positive came out of this conflict. The authenticity of the work was not proved as yet, and the question as to whether Richelieu had written the notes and not the text or vice versa was unsettled. In fact, the crux of the argument now centered around a study of the original manuscripts, which contained the text and some notes written on their borders. Of course, the Cardinal is accused of obtaining his ideas in finances from Sully, but this proves nothing, as Boehm points out, for any writer at that time used the intellectual ideas of the age as common property. This custom is also illustrated in Richelieu's *Memoirs*, but they must be considered likewise a part of his own ideas.⁹

Both Foncecagne and Ranke recognized the spirit of Richelieu in this work, but when they found anything in the book which reminded them of other authors they put down a question mark as to that particular section. The best example is perhaps the chapter devoted to the finances, which was considered to have been written by Sully or someone else who had read Sully's works. However, Foncecagne admitted finally that the chap-

⁸ Boehm, 23-24.

⁹ *Ibid.*, 28. Also, that the Cardinal might have obtained his ideas from Montehrétién, but what does this prove?

ters concerning the finances and the marine, if not written by the Cardinal, were set down by his secretaries under his supervision. Boehm does not doubt that they were the ideas of Richelieu and of no one else.¹⁰

The final stage of the controversy was reached when Hano-taux brought out his *Fragments et Maximes de Richelieu*, which were written by Richelieu without doubt, since his handwriting has been recognized.

Now these fragments are a part of his *Testament Politique*. That is, all the passages having a certain mark are found in the latter work. Furthermore, along the margin of certain passages is found the word *Testament*, which would tend to prove that particular sections were to be inserted in his last great work.

"However, Hano-taux's discovery does not absolutely prove the authenticity of the *Politique*," says Boehm.¹² It merely supports the funeral oration mentioned above in the proof that the Cardinal actually intended to write a work of that kind. One must further conclude that the real *Testament Politique* arose uniformly and grew as an organic unit, that it was written during the latter part of his life, and that it was completed and was not a mere "torso." The Fragments to Boehm are just a part of the work. The marginal notes on the text are changes to be made in the revision of the work. He has no doubt that the fragments, the text, and the marginal notes comprise what Richelieu planned should be a part of a final copy which he would not be able to finish.¹³ Does this explanation not help to explain the late publication of the work and the silence concerning it? In other words, the *Testament Politique* we now have is a combination of the text, the marginal notes, and the fragments. That the process of copying might bring about slight mistakes is to be expected, but this fact does not prove the falsity of the work.

Finally, when one considers again the purposes which Richelieu had in writing this book: (1) to influence the King to wait

¹⁰ Boehm, 29-30.

¹¹ Richelieu, *Maximes d'État*, 707-728.

¹² Boehm, 30-31.

¹³ *Ibid.*, 30-31.

until the coming peace to take up the great reorganization of the state, (2) to leave a defense of his life-work against future attacks that might be made against him; one cannot doubt its importance and truth: "out of these purposes grew the great interest which Richelieu put into his work and the value he attributed to it."¹⁴ That he tried to adopt and follow out a system based on what is in his *Testament Politique* is evident to students of his administration. Indeed, the tenseness and unity of it all, the firmness with which the portions were skillfully inserted in the building up of the whole work, and above all the high personal purpose of it all, makes Richelieu responsible for every line of it. When one studies his life and finds out how he constantly considered the future of France; when one compares this work with his Memoirs and letters, and sees the conformity in style, judgment, and opinions, it seems inconceivable that this is the work of any other man than the Cardinal. Was there another individual in France capable of writing a book as great as the *Testament Politique*? Bonnefon says, "It is a work which shows the man more than the writer,"¹⁵ and this makes it of supreme value; for in reading it, one can conceive of no other personality than that of Richelieu behind it all. Pigeonneau sums the whole matter up when he says that it is his work in thought as in style.¹⁶ The authenticity of the *Testament Politique* is today generally admitted.¹⁷

¹⁴ Boehm, 32.

¹⁵ Bonnefon, 415-416.

¹⁶ Pigeonneau, II, 376-377.

¹⁷ Molinier, XI, 35.

BIBLIOGRAPHY TO APPENDIX B

The above appendix has been based to a large extent upon material found in the following works.

- I. Boehm, Ernest, *Studium zum Politischen Testamente Richelieus*, Leipzig, 1902.

Dr. Boehm, in preparation for the doctoral degree, investigated the problem with special reference to the fight over the authenticity of the *Testament Politique*. The dissertation seems to be sound and has been relied upon for much of the material in the above appendix.

- II. Richelieu, A. J. du Plessis, Cardinal, duc de, *Maximes d'État et Fragments Politiques du Cardinal de Richelieu*. Ed. Gabriel Hanotaux (Collection des Documents Inédits sur L'Histoire de France.) Vol. LI.

M. Hanotaux's remarks in the introduction throw new light upon the question at issue, and constitute a decisive stage in the controversy.

- III. Richelieu, A. J. du Plessis, Cardinal, duc de, *Mémoires* (M. Petitot, Editor). Vols. X and XI, Paris 1819-1829.

M. Petitot brings out clearly in these volumes his idea of the strong relationship existing between the *Testament Politique* and the *Mémoires*.

- IV. Molinier, Augusta E., *Les Sources de l'Histoire de France*, etc. Vol. XII. See appendix A, I-I.

INDEX

- Admiralty, seven bureaux of, 102.
 Africa, colonies in, 108, 110, 119, 120; commerce in, 163, 164; pirates of, 95, 101; Richelieu's accomplishments in, 135.
 Agriculture, 83-85.
 Aides, 113.
 Aiguillon, duchess of, 190.
 Algiers, commerce with, 135.
 Aleppo, 132, 133.
 Alexandria, 131, 132.
 America, 135; colonies in, 108, 110, 116, 118, 144.
 American colonies, diplomacy with regard, 168.
 Americas, 111, 170.
 Amsterdam, 192.
 Anne of Austria, 142.
 Antilles, company of the, 118.
 Arctic, region of, 117.
 Army, 38, 60, 67, 68, 72, 83.
 Asia, colonies in, 108, 110, 111, 119; commerce in, 131.
 Assembly of notables, 65, 66, 95, 125; *cahiers* of, 27.
 Atlantic, piracy on, 101.
 Aubery, 190, 191.
 Austria, 13, 20; diplomacy with regard, 136, 137, 158, 161, 164, 165, 168, 170.
 Bagdad, 131.
 Baltic, and commerce, 131; and diplomacy, 137, 165-166, 167, 169.
 Barbary Pirates, 96, 144, 163.
 Barbary States, 92, 135.
 Bassompierre, Grand Maréchal de, 82.
 Baugy, M. A. M. de, 127.
 Beer industry, 85.
 Bonds, 71, 79, 80.
 Bordeaux, archbishop of, 53.
 Bourse, the, 160.
 Bouthillier, superintendent of finances, 66, 67.
 Braire, canal, 26, 87.
 Brest, 119, 155.
 Bridges, 88.
 British Museum, 190.
 Brittany, 72, 94, 115, 150, 155.
 Brouage d' Orleans, 103.
 Buckingham, duke of, 151.
 Bullion, superintendent of finances, 66, 68.
 Cadiz, 44.
Cahiers, of the third estate, 85.
 Cahusac, French admiral, 157.
 Canada, colonies in, 113, 116; commerce in, 164; control of, 159; fur trade in, 139; Huguenots and, 54.
 Canals, development of, 86-88.
 Cape of Good Hope, 121.
 Cape Verde, 120.
 Capitian, days of, 49.
 Capitulations, with Turkey, 132.
 Cartier, Jacques, 116.
 Caspian Sea, 136.
 Centralization, economic aspects of, 46-62.
 Chamber of justice, 64.
 Champigny, superintendent of finances, 64.
 Champlain, 21, 108, 109, 114, 117, 118; in America, 116.
 Charlemagne, 95.
 Charles I, of England, 159.
 Charles VI, of France, 95.
 Charles IX, of France, 88.
 Charnace, 165.
 Chartres, 87.
 Chateaneuf, 35, 157, 158, 159.

- Chief councillor, 46-47.
 China, 133; Jesuits in, 119.
 Clarente, 55.
 Clergy, and colonization, 111; and finances, 69; member of, 63; Richelieu's attitude toward, 36-38.
 Code Michaud, 100, 125.
 Colbert, 20; age of, 105; and the marine, 106; and his policies, 172, 173; and taxation, 71; colonies and, 108, 110, 111; importance of, 64.
 Coligny, 109.
 Colonization, Richelieu's ideas with regard, 108-125.
 Commerce, foreign, 125-140.
 Commonwealth of Plato, 81.
Comptons, 79.
 Connétable, office of, 47, 93.
Conseil, 95.
 Constantinople, 131, 132, 133.
 Conway, 150.
 Corvées, 84, 88.
 Cromwell, 125.
 Danzig, 168, 169.
 d'Armacon, 87.
 d'Éfiat, marquis, superintendent of finances, 64, 65, 72, 75.
 d'Etampes, 87.
 De Fontenay-Mareuil, 159.
 d'Infreville, Leroux, 101.
 Denmark, commerce of, 136, 137, 144; diplomacy with regard, 168-169; the marine of, 95.
 d'Ouche, 87.
 Dieppe, 153; and colonies, 119, 120; company of, 116.
 Distillers, 85.
 Dominique, 119.
 Doniol, Henri, 83.
 Duel, edict against, 50.
 Dutch East India Company, 25.
 163; company of, 116; rivalry over, 138, 162.
 Elector Palatine, 161.
 Elizabeth, Queen, 159.
 England, 23, 24, 25, 27, 54, 55; and French commerce, 138, 139; and Holland, 143; and Huguenots, 174; and marine, 92, 95, 97, 98, 99; and Polish trade, 136; and salt trade, 57, 142; and Seven Years' War, 167; colonies of, 108, 109, 110, 122, 126, 128, 129, 130; commerce of, 163; piracies of, 96; Richelieu's attitude toward, 147-162, 168, 169, 171.
 Entail, 84.
 Estates General, 21, 27, 52, 63, 85.
 Europe, 50, 122, 141, 164.
 Father Joseph, 46, 119, 131.
 Finances, Richelieu's administration of, 62-82.
 Flanders, 89; commerce in, 143, 144; diplomacy of, 145.
 Florida, 117.
 Foncecagne, 191, 192.
 Foreign commerce, Richelieu's ideas with regard, 125-141.
 Fort Richelieu, 118.
 Fournier, L. P., 105.
 France, viewed by Voiture, 176; according to Richelieu, 178; colonies of, 99, 108-124; commerce of, 71, 125-140; economic importance of, 19, 20, 21, 24, 25; economic tendency in, 28, 31, 35; finances and, 65, 66, 67, 73, 74, 76, 77; industry in, 86; local privileges in, 70; La Rochelle and, 56; Richelieu and, 59, 141-171, 172, 173, 174, 175; Seven Years' War and, 167; taxes in, 90.
 Francis I, of France, 94, 95.
 Frankfort, 44.
 French Revolution, 35, 50, 172.
 Frudaine, M. councillor of state, 190.

Gabelle, 71, 74, 79, 80.

Garde de Sceaux, 144.

Garonne, 55, 154.

Gaston d' Orleans, 51, 57, 72, 99.

Généralités, 14.

Genoa, 133.

Germany, 23, 89, 133, 165, 166;
commerce with, 147; Hanseatic
cities of, 99; Thirty Years' War
and, 170.

German salt, 136.

German states, 165, 167.

Grand master, chief, and general
superintendent of the navigation
and commerce of France, office of,
47-49, 57, 82, 92, 113, 119, 125;
duties of, 93; Richelieu's ideas as
to office of, 93-94, 102.

Grand Ordonnance, see Michaud.

Grand Seigneur, 132, 133.

Grotius, 118.

Guadeloupe, 119.

Guiana, 119.

Guise, duke of, 155.

Gustavus Adolphus, colonial policy
of, 170; death of, 169.

Guyon, 87.

Hamburg, 168.

Hanotaux, Gabriel, 191, 192.

Hansa cities, 155.

Hanseatic cities, 94; diplomacy
with regard, 168.

Hanseatic-League, decay of, 108.

Hapsburgs, 110, 111, 129; diplo-
macy with regard, 137, 141, 158,
164, 166, 167, 168, 169, 174.

Henry II, of France, 94.

Henry IV, of France, 19; colonies
in regime of, 108, 119, 120, 159;
economic achievements of, 20,
173; end of, 21, 22; failures of,
21, 27, 28; finances and, 64, 65;
internal administration of, 83,
85, 87; the marine of, 94, 95, 101,
103; the people and, 38.

Henrietta of France, 147, 148.

Holland, 23, 24, 27, 74; coloniza-

tion of, 108, 109, 116, 121; com-
merce of, 126, 128, 129, 130,
138, 139, 143, 144; diplomacy
with regard, 145, 147, 150, 153,
160, 162, 168, 169; Richelieu's
attitude toward, 97, 162-164.

Huguenots, 15, 32, 38, 46, 49, 100,
129, 142, 143; and commerce, 53,
54, 56, 57; Richelieu and the, 61,
62, 77, 80, 153-157, 163, 174;
ships and the, 96, 97, 103.

"Hundred Associates," companies
of, 115, 116, 173.

Indies, 98, 112; colonies in the,
115; commerce in the, 164.

Industry, in France, 85-86.

Intendant Générale, 88.

Intendants, 52; creation of, 70, 71;
duties of, 88.

Internal commerce, 86-92.

Iron industry, 85, 90.

Italy, 89, 98; and Spain, 145; com-
merce in, 136; commerce of, 144,
153; diplomacy with regard, 146,
164-165; expeditions in, 108;
manufactures in, 122, 139.

Japan, Jesuits in, 119.

Jerusalem, 131.

Jesuits, 119.

King, colonies and, 111, 116, 117;
centralization and, 46; finances
and, 68, 71, 78, 88; Huguenots
and, 53, 54; marine and, 99;
people and, 52; Richelieu's at-
titude toward, 30-31; war and,
141.

King of England, and French com-
merce, 151.

Laffemas, Isaac de, 95.

*La Nacelle de Saint Pierre Fleur-
delissé*, company of, 112.

La Rochelle, 53; and salt, 57, 71,
142, 143; and the government, 55;
commerce of, 116; diplomacy with

- regard, 147, 148, 150, 151, 152-157; fall of, 136; Richelieu and, 174; siege of, 104.
- Lauson, M. de, 127.
- "Laws of the sea," 159.
- Le Ros Saint Mahe*, 144.
- Le Traité de la Regale*, 191.
- Les messieurs de Saint-Malo*, 51.
- Lettres, patent*, 60, 72.
- Levant, 25, 95, 105; and Spain, 143; colonies in, 119; commerce with, 115, 126, 130, 132, 136, 164; diplomacy with regard, 165.
- "libelles," in Germany, 15.
- Liège, 170.
- Loire, 154.
- London, 44, 129.
- Louis XI, of France, 19, 49.
- Louis XIII, of France, 28, 47, 105, 110, 120, 151, 189.
- Louis XIV, of France, 173, 190.
- Louis d'or, 91.
- Lübeck, 168, 169.
- Luçon, bishopric of, 36, 40, 191.
- Lützen, 169.
- Madagascar, island of, 119, 120, 121.
- Mare Liberum*, 118.
- Marie de Médicis, French queen, 21.
- Marillac, superintendent of finances, 64.
- Marine, Richelieu's ideas with regard to the, 92-108.
- Marseilles, 132, 134.
- Martinique, island of, 119.
- Mazarin, Cardinal, 97, 172, 191.
- Medicinal plants, 61.
- Mediterranean, 86, 96, 101, 103, 113; a French lake, 135; and the Dutch, 143; and Spain, 144; commerce in the, 111; control of, 167, 168; rivalry on, 131.
- Mercantilism, age of, 17-29.
- Merchants, and colonization, 111.
- Mercurie François*, 44, 56, 145; colonies and, 124; commerce and, 90, 92, 95, 144; diplomacy and, 151, 152, 168.
- Meurier, Jean du, 112.
- Michaud, code de, 84.
- Molé, Mathieu, 111, 112.
- Montchrétien, 19, 21; and salt industry, 54; economic ideas of, 22, 23, 24, 25, 26, 27, 28, 173; marine and, 95.
- Montmorency, 47, 94, 120.
- Monts, Sieur de, 116.
- Morbihan, company of, 115, 122, 147.
- Morocco, commerce with, 135.
- Musselmans, Emperor of, 131.
- Nantes, 153.
- Naples, 133.
- Napoleonic War, 151.
- Navy, 38, 48, 67, 68, 72.
- Netherlands, 145, 147, 169.
- Newspaper, aid to commerce, 90.
- New France, colonies in, 113; company of, 73, 116, 117.
- New World, discovery of, 91; struggle for, 155.
- Nitschdil, count de, 159.
- Nobles, colonies and, 111; commerce and, 126; finances and, 69, 70; intendants and, 71; marine and, 95, 101; newspapers and, 90; privileges of, 73, 83; Richelieu's attitude toward, 32-36, 49, 50, 52, 61, 62, 64; suppression of, 142.
- Norman mariners, 19.
- Normandy, 150, 155.
- North Africa, commerce in, 135, 139.
- North America, 108, 118; fur trade in, 114.
- North German States, 169.
- Norway, commerce and, 113, 136, 137.
- Ordonnateur générale*, 82.
- Orient, 111; colonies in, 119; commerce with, 131, 165.
- Orleans, 55.

- Oléron, island of, 57; importance of, 55.
 Ottoman Empire, 131.
 Oxenstierna, 170.
- Palatinate, 159.
- Paris, 21; Parlement of, 47; paving of streets in, 86; postal service from, 89; province of, 87; Royal Garden at, 61.
- Parlement, 47; conflict in a, 115; Richelieu's attitude toward, 52, 55, 70.
- Parlements, local, 72.
- Pensions and Richelieu, 79.
- Persia, 131, 132, 133, 136, 162, 164; Jesuits in, 119.
- Picardy, 85.
- Pierre du Pont, 85.
- Plato, commonwealth of, 81.
- Poland, and commerce, 136, 166; and control of Baltic, 168.
- Port Royal, 157.
- Portugal, 144; and colonies, 108, 111; and commerce, 128.
- Portuguese, navigators, 19; revolt of, 146; revolution in, 170.
- Postal system, 88.
- Protestants, 13, 14, 117.
- Provence, 96, 134, 144.
- Prussia, 168.
- Quebec, 117, 118.
- Ranke, 192.
- Razilly, Isaac de, 110, 115, 120.
- Ré, island of, 55, 56, 103, 152.
- Réglement pour la mer*, 97.
- Rhine, border of, 164.
- "River Rulers," 101.
- Roads, development of, 88.
- Robeval, 116.
- Rome, 36, 133.
- Rouen, city of, and Morocco; colonies and, 120, 121; commerce and, 116; governor of, 51; piracy and, 127; Morocco and, 139.
- Rug industry, 85.
- Russia, 25; and commerce, 113, 131; and Spain, 143; diplomacy with regard, 166; French commerce with, 136.
- Saint-Germain, treaty of, 160.
- Saint-Kitts, island of, 118, 157, 159.
- Saint Lawrence, river of, 117.
- Saint-Malo, Les Messieurs de, 126.
- Saint-Palaye, M. de, 190.
- Sanson, the geographer, 121.
- Sanson Napolon, 135.
- Savoy, 129.
- Schools, for liberal arts, 83; for pilots, 103; technical, 86; trade, 82.
- Séguiran, Henri de, 101.
- Sendre, river, 55.
- Senegal, colonies of, 119.
- Seven Years' War, 167.
- Sicily, 133.
- Silk industry, 85.
- Smyrna, 133.
- Sorbonne, 190.
- Sou per livre*, tax, 74, 75, 79.
- South America, colonies in, 118.
- Spain, 20, 23, 24, 25, 38, 49, 52; and finances, 65; and marine, 92, 97, 98, 104, 105; and postal service, 89; colonies of, 108, 110, 115, 118, 122; commerce and, 126, 128, 129, 130, 136, 138, 139; diplomacy and, 140, 149, 150, 153, 154-155, 156, 157, 158, 160, 161, 162, 164, 167, 168, 169, 170; pirates of, 96, 101; Richelieu's relations with, 142-147.
- Spanish navigators, 19.
- Speculations, in food, 89, 90.
- State Socialism, 58.
- Sublet des Noyers, secretary of state, 82.
- Sue, M., 105, 106.
- Sully, economic achievements of, 20, 21, 22, 28; financial policy of, 75; ideas of, 173; importance of, 64, 65; Richelieu's letter to, 41; naval marine and, 94.

- Sulton, 131.
- Sweden, and commerce, 113, 136, 137; diplomacy with regard, 158, 165, 166; Richelieu and, 168, 169, 170; the sea and, 95.
- Swiss, cantons of, 167; commerce with, 135, 153; soldiers of, 136.
- Switzerland, 89.
- Taille*, tax, 64, 65, 71, 73, 78, 79, 80, 83, 84, 113.
- Tarragona, 53.
- Testament Politique*, 15, 23, 26, 27, 29, 31, 34, 38, 41, 42, 45, 62, 63, 161, 164, 173, 174, 175; and colonization, 115, 122, 146; and commerce, 134, 138-139, 164; and finances, 75-81; and the marine, 92, 97-98; authenticity of, 189-194.
- Third estate, finances and, 63; Richelieu's attitude toward, 38-44.
- Thirty Years' War, 13, 46, 66, 128, 129, 130, 138, 140, 142; and colonization, 119; and diplomacy, 147, 157, 158, 159, 160, 161, 162, 164-170, 176.
- Toulon, 103.
- Tours, 139.
- Transportation, in France, 88, 89, 90, 107.
- Tunis, 135.
- Turkey, commerce and, 130, 131; diplomacy with regard, 165.
- Ultramontaniam, 36.
- Universities, 61, 88.
- Usselinx, Wilhelm, 168.
- Venetian ambassador, report of, 149, 154.
- Venice, 79.
- Vettes, river, 87.
- Voiture, letter of, 175-176.
- Volga, river, 136.
- Voltaire, 191, 192.
- West Indies, colonies in, 114, 115, 118, 120, 121; commerce in, 140; company of, 173; Portuguese and, 138.
- Wine growers, 85.
- Witte, Nicholas, 112.
- Zollverein*, 144, 169.

ILLINOIS BIOLOGICAL MONOGRAPHS

Vol. I

- Nos. 1 and 2. A revision of the cestode family proteocephalidae. With 16 plates. By G. R. La Rue. \$2.00.
- No. 3. Studies on the cestode family anoplocephalidae. With 6 plates. By H. Douthitt. 80 cents.
- No. 4. Larval trematodes from North American fresh-water snails. With 8 plates. By W. W. Cort. \$1.20.

Vol. II

- No. 1. The classification of lepidopterous larvae. With 10 plates. By S. B. Fracker. \$1.50.
- No. 2. On the osteology of some of the loricati. With 2 plates. By John E. Gutberlet. 50 cents.
- No. 3. Studies of gregarines. With 15 plates. By Minnie E. Watson. \$2.00.
- No. 4. The genus meliola in Porto Rico. With 5 plates. By Frank L. Stevens. 75 cents.

Vol. III

- No. 1. Studies on the factors controlling the rate of regeneration. By Charles Zeleny. \$1.25.
- No. 2. The head-capsule and mouth-parts of Diptera. With 25 plates. By Alvah Peterson. \$2.00.
- No. 3. Studies on North American Polystomidae, Aspidogastridae, and Paramphistomidae. With 11 plates. By Horace W. Stunkard. \$1.25.
- No. 4. Color and color-pattern mechanism of tiger beetles. With 29 black and 3 colored plates. By Victor E. Shelford. \$2.00.

Vol. IV

- No. 1. Life history studies on Montana trematodes. With 9 plates. By E. C. Faust. \$2.00.
- No. 2. The goldfish (*Carassius carassius*) as a test animal in the study of toxicity. By E. B. Powers. \$1.00.
- No. 3. Morphology and biology of some turbellaria from the Mississippi Basin. With 3 plates. By Ruth Higley. \$1.25.
- No. 4. North American Pseudocyllidean cestodes from fishes. With 13 plates. By A. R. Cooper.*

Vol. V

- No. 1. The skull of *Amiurus*. By J. E. Kindred. \$1.25.
- No. 2. Contributions to the life histories of *Gordius robustus* Leidy and *Paragordius varius* (Leidy). By Henry Gustav May. With 21 plates. \$1.50.
- Nos. 3 and 4. Studies on Myxosporidia. A synopsis of genera and species of Myxosporidia. By Rokusaburo Kudo. With 25 plates and 2 text figures. \$3.00.

Vol. VI

- No. 1. The nasal organ in Amphibia. By G. M. Higgins. With 10 plates. \$1.00.
- Nos. 2 and 3. Revision of the North American and West Indian species of *Cuscuta*. With 13 plates. By Truman George Yuncker. \$2.00.
- No. 4. The larvae of the Coccinellidae. With 6 plates. By J. Howard Gage. 75 cents.

Vol. VII

- No. 1. Studies on gregarines. II: a. A synopsis of the polycysted gregarines of the world, excluding those from the Myriapoda, Orthoptera, and Coleoptera; and b. An annotated list of the new gregarine described from 1911-1920. By M. W. Kamm. \$1.00.
- No. 2. The mollusk fauna of the Big Vermilion River, Illinois, with special references to the Naiades or fresh water mussels. By F. C. Baker.

UNIVERSITY OF ILLINOIS STUDIES IN LANGUAGE AND LITERATURE

Vol. I

- Nos. 1 and 2. The phonology of the dialect of Aurland, Norway. By George T. Flom. \$1.25.
Nos. 3 and 4. Studies in the Milton tradition. By John W. Good. \$1.75.

Vol. II

- No. 1. Thomas Warton: a biographical and critical study. By Clarissa Rinaker. \$1.00.
No. 2. Illustrations of medieval romance on tiles from Chertsey Abbey. By Roger Sherman Loomis. 75 cents.
No. 3. Joseph Ritson, a critical biography. By Henry Alfred Burd. \$1.00.
No. 4. Miscellanea Hibernica. By Kuno Meyer. \$1.00.

Vol. III

- No. 1. The *Ad Deum Vadit* of Jean Gerson. By David H. Carnahan. \$1.75.
No. 2. Tagalog texts with grammatical analysis. Part I. Texts and translation. By Leonard Bloomfield. \$1.50.
No. 3. The same. Part II. Grammatical analysis. \$3.00.
No. 4. The same. Part III. List of formations and glossary. \$1.50.

Vol. IV

- No. 1. Madame De Staël's literary reputation in England. By R. C. Whitford. 75 cents.
Nos. 2, 3 and 4. Index verborum quae in Senecae fabulis necnon in Octavia praetexta reperiuntur. By W. A. Oldfather, A. S. Pease, and H. V. Canter. Part I, \$2.00. Parts II and III, \$1.50 each.

Vol. V

- Nos. 1 and 2. The influence of Christianity on the vocabulary of Old English poetry. By A. Keiser. \$1.50.
No. 3. Spenser's defense of Lord Grey. By H. S. V. Jones. \$1.00.
No. 4. Ysopet-Avionnet: The Latin and French texts. By K. McKenzie and W. A. Oldfather. (In press.)

Vol. VI

- No. 1. La Coleccion Cervantina de la Sociedad Hispanica de America. Ediciones de Don Quijote. By Homero Seris. \$1.50.

Vol. VII

- No. 1. Sir Robert Howard's comedy, "The committee." With introduction and note. By C. N. Thurber. \$1.50.
No. 2. The sepulchre of Christ in art and liturgy. By N. C. Brooks. \$1.50.
No. 3. The language of Konungs Skuggsjá. By G. T. Flom. (In press.)

UNIVERSITY OF ILLINOIS STUDIES IN THE SOCIAL SCIENCES

Vol. IX, 1920

- Nos. 1 and 2. War powers of the executive in the United States. By C. A. Berdahl. \$2.25.
No. 3. English Government Finance, 1485-1558. By F. C. Dietz. (Out of print.)

Requests for exchange for the Studies in the Social Sciences, the Biological Monographs, and the Studies in Language and Literature should be addressed to the Exchange Editor, Library, University of Illinois, Urbana, Ill. All communications concerning sale or subscription, or of an editorial nature, should be addressed to the Editor of the University Studies, University of Illinois, Urbana, Ill. The subscription price of each series is three dollars a year. The prices of individual monographs are shown in the lists given above.

H
31
I4
v.9

Illinois. University
Illinois studies in the
social sciences

CIRCULATE AS MONOGRAPH

PLEASE DO NOT REMOVE
CARDS OR SLIPS FROM THIS POCKET

UNIVERSITY OF TORONTO LIBRARY

CIRCULATE AS MONOGRAPH

